EXHIBIT A

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1   IN THE UNITED STATES DISTRICT COURT
          FOR THE EASTERN DISTRICT OF VIRGINIA
2   RICHMOND DIVISION
3   _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _
                              :
4   ePLUS, INC.,   :
                              :
5   Plaintiff,   :
     v.   : Civil Action
6   : No. 3:09CV620
     LAWSON SOFTWARE, INC.,   :
7   : January 6, 2011
            Defendant.   :
8   _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _:
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11   COMPLETE TRANSCRIPT OF JURY TRIAL
         BEFORE THE HONORABLE ROBERT E. PAYNE
12   UNITED STATES DISTRICT JUDGE, AND A JURY
13
14
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         UNITED STATES DISTRICT COURT

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1   (The proceedings in this matter commenced at
2   9:20 a.m.)
3   THE CLERK: Civil Action No. 3:09CV00620,
4   ePlus, Incorporated v. Lawson Software, Incorporated.
5   Mr. Scott L. Robertson, Mr. Craig T. Merritt,
6   Ms. Jennifer A. Albert, Mr. Michael T. Strapp, and Mr.
7   David M. Young represent the plaintiff.
8   Mr. Daniel W. McDaniel, Mr. Dabney J. Carr,
9   IV, Ms. Kirstin L. Stoll-DeBell, and Mr. William D.
10   Schultz represent the defendant.
11   Are counsel ready to proceed?
12   MR. ROBERTSON: Yes, Your Honor.
13   MR. McDONALD: Yes, Your Honor.
14   THE COURT: All right. Thank you very much.
15   I apologize for keeping you-all waiting this
16   morning. I had a mechanical malfunction that I needed
17   to attend to, and I'm not very mechanically oriented.
18   All right, Mr. Robertson.
19   Dr. Weaver, I remind you you're under the
20   same oath which you took yesterday.
21   THE WITNESS: Yes, Your Honor.
22   BY MR. ROBERTSON: (Continuing)
23   Q   Good morning, Dr. Weaver.
24   A   Good morning.
25   Q   If we could have Plaintiff's Exhibit No. 1 back up

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1   on the screen again, the '683 patent, the cover page
2   here.
3   Dr. Weaver, the jurors have seen this exhibit now
4   several times and it's in their jury notebooks. This
5   is at tab 2. Can you just tell us what is the title
6   of the patent?
7   A   Electronic Sourcing System and Method.
8   Q   Has the Court defined the term "electronic
9   sourcing system"?
10   A   Yes, it has.
11   Q   What's your understanding as to what that
12   construction is?
13   A   In the glossary of claim terms, the "electronic
14   sourcing system" has been defined by the Court to be
15   an electronic system for use by a prospective buyer to
16   locate and find items to purchase from sources,
17   suppliers or vendors.
18   Q   What is your understanding of what a source is,
19   sir?
20   A   A source would be a vendor or a manufacturer or a
21   distributor.
22   Q   In the Court's construction of the claim term
23   "catalog" or "product catalog," how does the Court
24   define what a vendor can be?
25   A   The vendor, in the Court's construction, a vendor

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1 request for proposal and this is Lawson's response to

2 that RFP.

3 Q What is the date of this?

4 A December 14, 2005.

5 Q Let me focus you then on -- well, what was your

6 understanding that the Scottsdale Unified School

7 District, No. 48, was requesting Lawson to make a

8 proposal for?

9 A Financial management software.

10 Q Did it also include procurement software?

11 A Yes, it did.

12 Q Can I direct you to the page that ends with the

13 Bates label 687. And at the top of the page there's a

14 heading called "Lawson's Procurement Suite." Do you

15 see that?

16 A I do.

17 Q There's a subheading, "Purchase Order." Do you

18 see that?

19 A I do.

20 Q Is the purchase order module one of the pieces of

21 software that you did some analysis with respect to

22 your infringement opinions?

23 A Yes, it's one of those modules.

24 Q And what does Lawson represent here, focusing now

25 on about --

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1 MR. ROBERTSON: Starting at the beginning

2 down to about "receiving goods," midway through that

3 paragraph, if you could highlight that for me, Mike.

4 The entire paragraph.

5 Q What is Lawson indicating here in response to this

6 request for proposal as to the purchase order module

7 of its procurement suite?

8 A So after the words "Lawson's purchase order," it

9 says that it streamlines the procurement process from

10 establishing vendor pricing, agreements, and

11 contracts, importing and maintaining item information,

12 creating and issuing purchase orders to receiving

13 goods.

14 Q And purchase order is a subject of the claims that

15 are at issue in this case?

16 A Yes.

17 Q What does Lawson say there with respect to the

18 advantage of this purchase order module that they are

19 offering?

20 A That it's going to improve efficiency.

21 Q How is it going to do that?

22 A By automating this process of putting everything

23 on a computer.

24 Q All right. Can you explain to the jury what this

25 vendor price agreement is that's referenced here?

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1 A Sure. The vendor price agreement is a contractual

2 agreement between Lawson's customer and a particular

3 vendor that the vendor is going to supply a set of

4 items at a fixed cost or at a particular cost.

5 Q It references here to importing item information.

6 What's your understanding with respect to what

7 importing item information means in Plaintiff's

8 Exhibit 219, this response to an RFP?

9 A When you have a database of information, it has to

10 be filled. We call it populated. You populate the

11 database. And the way that or one of the ways that

12 you can do that is to bring in data and put it into

13 the format that is appropriate for the database. And

14 that process is called importing. Importing data into

15 the database.

16 Q Can you turn to the next page, please. And on

17 this page it's entitled, Requisitions. Do you see

18 that?

19 A Yes.

20 Q Is that one of the software modules that you

21 examined in order to determine your make your

22 infringement analysis?

23 A Yes, it's part of the procurement suite.

24 Q At the bottom there's a heading that says, Several

25 Features of Lawson's Requisition Include. Do you see

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1 that?

2 A I do.

3 Q There are six bullet points, I believe. Can you

4 focus us in on the bullet points you think are

5 significant to your opinions?

6 A The two that I think are important here are the

7 first bullet point, custom catalogs and templates.

8 And the fourth one; stock, nonstock, special items or

9 services on a single requisition.

10 Q Why do you find those significant?

11 A Because these relate to the patent claims.

12 Q In what way?

13 A In that the patent talks about being able to have

14 electronic catalogs, and that as items are picked on a

15 hit list, then it becomes ultimately an order list, a

16 chosen set of items. That ultimately becomes a

17 requisition. And that is what the requisitioning

18 system in Lawson does.

19 Q It indicates you can have stock, nonstock, special

20 items or services on a single requisition. Is that

21 significant in your analysis?

22 A Oh, yes. If you recall from yesterday, when I was

23 starting my computer lab back in the '70s, the

24 purchasing specialist and I had to write -- had to

25 take my list of wants and divide that so that we were

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1 sending requisitions to an individual vendor to get
2 quotes. So it's a convenience and a time saver and a
3 cost saver if I can put all of the items that I want
4 to order on a single requisition.
5   And then in this case because it's computerized,
6 the purchase order module can look at the requisition
7 and look at that single requisition and divide it into
8 purchase orders automatically. So the single
9 requisition is a big deal.
10 Q What's a nonstock item, sir?
11 A Well, that's something that the company does not
12 have in stock and so it's bought from an external
13 vendor.
14 Q This ability to buy various items from various
15 vendors and place them on a single requisition, is
16 that included in any of the claim elements that you
17 have examined?
18 A Yes, it is.
19 Q Can you give us just an example. Can I look at
20 Claim Three of the '683 patent?
21 A Sure.
22 Q Tell us where that particular feature is.
23 A Sure. That is being color-coded in blue. Means
24 for building a requisition using data related to
25 selected matching items and their associated sources.

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1 three main software modules in the procurement suite
2 along with requisitions that we just looked at, and
3 before that, the purchase order module.
4 Q Could we go to, in 219, could we go to the page
5 that ends in 013? It's actually PX 219 at 0179. Let
6 me make sure I've got it. Thank you. Okay.
7   There's a series of questions here. Let me just
8 go to the beginning of it. They start at page 177 of
9 this exhibit. Do you see it says,
10 Requisition/purchase order process, No. 9, at the top
11 there?
12 A I'm sorry. What page?
13 Q 177 of 180. It's in the middle at the bottom
14 there.
15 A Page 177?
16 Q Yes, sir. It ends with 0119011.
17   THE COURT: What do you mean ends with?
18   MR. ROBERTSON: Excuse me?
19   THE COURT: It ends? What's the "it"?
20   MR. ROBERTSON: The Bates number, Your Honor.
21   THE COURT: The lower number in the number is
22 a Bates number, and what number is that one?
23   MR. ROBERTSON: This is exhibit number --
24   THE COURT: No, what number is the Bates
25 number? Sorry.

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1 Q So we could have a requisition with matching items
2 from more than one source; is that right?
3 A That's right.
4 Q Is that consistent with the representation that
5 Lawson is making in its response to a request for
6 proposal on page 868 of Plaintiff's Exhibit 219?
7 A Yes, it is. It's talking about nonstock items on
8 a single requisition.
9 Q Can you take a look at the next page titled
10 "Inventory Control." Is the inventory control module
11 one of the modules you examined in conducting your
12 infringement analysis?
13 A Yes, it is a third module in the procurement
14 suite.
15 Q Is there anything you'd like to direct us to here?
16 What does the inventory control module permit you to
17 do?
18 A Yes. The introductory sentence there explains
19 what's going on. Inventory control enables you to
20 effectively monitor and manage inventory throughout
21 the organization. It's flexible design and complete
22 integration with requisitions and purpose order
23 applications help facilitate a smooth flow of
24 information and products.
25   So, again, this inventory control is one of the

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1   MR. ROBERTSON: 9011.
2   THE COURT: Can you find that, Doctor?
3   THE WITNESS: Yes. That's my page 180.
4 BY MR. ROBERTSON:
5 Q So there's a heading 9 there called
6 Requisition/purchase order process. Do you see that?
7 A Right. I've got it now.
8 Q Well, there are a number of questions that are
9 being asked under that heading, correct?
10 A Right.
11 Q And Lawson is giving a number of responses. Do
12 you see that?
13 A I do.
14 Q Okay. Can you go now to page 179 of 180 or where
15 it ends with the Bates label 9013, and there's a
16 question G. Do you see that?
17 A I do.
18 Q Now, confirm for me that we're still talking about
19 the requisition/purchase order process questions that
20 are being asked by Scottsdale Unified School District?
21 A Yes.
22 Q Okay. There's a question there: Does the system
23 allow for a catalog of preapproved items for the
24 requisitioners to choose from. Do you see that?
25 A I do.

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1   Q   What was Lawson's response?

2   A   Individual departments and users can establish

3   custom catalogs that reflect their unique ordering

4   patterns. Furthermore, you can establish catalogs for

5   certain days of the week by item classification,

6   vendor, or other criteria.

7   Q   Turning back to that Claim Three demonstrative we

8   have, the first element says at least two product

9   catalogs. Do you see that?

10   A   I do.

11   Q   Can there be more than two?

12   A   Oh, yes.

13   Q   But there must be a minimum of two?

14   A   That's right.

15   Q   When we're talking about these, the claim element

16   three, which says, Means for selecting product

17   catalogs to search, just explain what your

18   understanding of that is from the perspective of a

19   person of ordinary skill in the art.

20   A   This means that there must be a user interface

21   capability that allows a user to select one or more of

22   the catalogs that are available in the system.

23   Q   Can we go to -- this is demonstrative 093, page 1.

24   Side by side. This is the short form color-coded

25   demonstrative. Can you put that next to the 093, page

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1   2?

2   You mention the term "user interface," Doctor.

3   What did you mean by that term?

4   A   That's a computer science term of art and it means

5   the way that the computer program is going to

6   converse, as it were, with the human user. And if

7   you're familiar with Google or Yahoo, you're familiar

8   with a text box where you type in. In Google, you're

9   typing in a search query. But that text box is an

10   example of a user interface.

11   If you're represented with a drop down menu and

12   you click on the top element, the drop down menu opens

13   up, and you can scroll down and pick one of those

14   elements.

15   If you have a selection to make and you have a

16   series of radio buttons, then you can click on one

17   button, and you have made a selection of one out of

18   however many choices there are.

19   If you double click on a hyperlink, then that user

20   interface element is directing the browser to go to

21   another page. So --

22   Q   Let me stop and ask you what a hyperlink is?

23   A   Hyperlink is an encoding within a web page that

24   says -- that redirects the browser to a different page

25   when you click on it.

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1   Q   Sir, with respect to this claim element, for

2   purposes of the jury's determination, what is relevant

3   to your determination in their assessment of whether

4   infringement occurred?

5   A   It's whether or not that user interface exists in

6   the Lawson system.

7   Q   And in your analysis of the Lawson system, does

8   that, in fact, exist?

9   A   Yes. I'm going to demonstrate that later.

10   Q   This claim element we've been looking at for the

11   means of selecting the product catalogs to search,

12   does the claim require that the user select multiple

13   product catalogs to search simultaneously?

14   A   No, not simultaneously. You could search one

15   catalog and then search another one. So a serial

16   search would satisfy this claim element.

17   Q   Going back to the third element of Claim Three,

18   which recites means for searching for matching items

19   among the selected product catalogs, and you have

20   illustrated this in your diagram. What's your

21   understanding of how the system needs to perform in

22   order to accomplish that element?

23   A   Well, if you're going to search, then you need a

24   search program. And the search program has to have

25   input, a query, so it knows what to search for. And

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1   so if you have a search program and if the user can

2   input a search request, then that search program can

3   identify matching items, items that match the query

4   term among the selected product catalogs.

5   You could also do it not only with textual search,

6   but with drop down menus. You could search that way,

7   too.

8   Q   You used the term "drop down menu." Could you

9   just explain what you mean when you use that term?

10   A   Yes. So in building a web page, this is done

11   using hypertext markup language, HTML, and there's a

12   standard construct there that's a drop down menu. So

13   you program this so when this is displayed to the

14   user, there is a top level catagory, and it typically

15   says "select." And if you click on select, then the

16   menu opens up. It drops down and a series of choices

17   are presented. And then you can take the mouse and

18   pick one of those.

19   The most insidious of these is when you're trying

20   to fill in your address and the choice is state. You

21   click on state, and all the 50 states fill up your

22   whole screen, and you have got to go pick one.

23   Q   In one of these demonstrations you're going to do

24   on the Lawson accused product, will we see this drop

25   down menu?

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1   A   We sure will.

2   Q   The next element of Claim Three, which is

3   color-coded blue and has this means for building a

4   requisition using data relating to selected matching

5   items and their associated sources, what's your

6   understanding as to what a requisition is?

7   A   The requisition is the formal list of items that

8   you wish to purchase.

9   Q   Moving on to the next element of Claim Three,

10 which is yellow in your illustration. It says, A

11 means for processing the requisition to generate one

12 or more purchase orders for the selected matching

13 items. You mention the term "purchase order" when you

14 were discussing requisitions. How does a purchase

15 order differ from a requisition?

16 A   The requisition is the list of things you want. A

17 purchase order is the contract vehicle for buying. So

18 when I have a purchase order and I send it to a

19 company, this is the legal document that says I want

20 to buy the item or items on this purchase order.

21   Requisition is your total list of things you'd

22 like to buy. Purchase orders go to individual

23 companies.

24 Q   When you're providing your understanding of the

25 definitions and the meanings of these terms, is that

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1   the same understanding as a person of ordinary skill

2   in the art at the time?

3   A   Yes.

4   Q   So how would the fifth element of Claim Three be

5   satisfied?

6   A   We would have to see a requisition module that can

7   take the formal requisition, which could have many

8   items from many vendors, and then turn that into one

9   or more purchase orders. And, typically, you have all

10 the items from one vendor on one purchase order if you

11 can do it. If they are present.

12 Q   Moving on to the sixth and last element of Claim

13 Three, which you have color-coded brown. That element

14 recites means for converting data relating to a

15 selected matching item and an associated source to

16 data relating to an item and a different source. How

17 are we to understand that claim element?

18 A   So if I have a list of items and for some

19 reason -- let's say I want to do comparison shopping

20 or say that the item that I want, I've checked the

21 inventory, and it's not available. So there has to be

22 a converting means whereby I can look for similar

23 items, and this is all computer assisted. I can find

24 similar items that I might choose instead of the one

25 that I had initially inquired about.

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1   MR. McDONALD: Your Honor, I'm going to

2   object to this question about this. This is a

3   means-plus-function clause and he's asking him what it

4   means. It should be done in the context of the --

5   THE COURT: I was just looking at page 2 of

6   the glossary. I think that's been defined over there.

7   MR. ROBERTSON: I was just going to ask him

8   to go to that page.

9   THE COURT: Don't be having him give his own

10 constructions, please, before you ask him to go to the

11 ones that have been construed.

12 BY MR. ROBERTSON:

13 Q   If you go to page 2 of the Court's glossary, Dr.

14 Weaver.

15 A   Yes.

16 Q   What's the function that's being defined here on

17 the means for converting data for this claim element?

18 A   The function of this element is converting data

19 related to a selected matching item and an associated

20 source.

21 Q   According to the Court, how can this function be

22 accomplished? By what structure?

23 A   The corresponding structures, materials or acts of

24 this element are disclosed as one or more non-catalog

25 databases identifying cross-referenced items,

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1   identical items, or generally equivalent items; one or

2   more cross-reference tables or file identifying

3   cross-referenced items, identical items, or generally

4   equivalent items; one or more codes corresponding to

5   cross-referenced items, identical items or generally

6   equivalent items; and their equivalents.

7   Q   In that definition there are non-catalog databases

8   identifying cross-referenced items, identical items or

9   generally equivalent items, cross-reference tables or

10 files and one or more codes.

11   As a computer scientist, can you tell us what your

12 understanding as a person of ordinary skill in the art

13 would understand those three terms to mean?

14 A   Sure. So a non-catalog database is a file that is

15 not part of the physical structure of the database

16 system. So it's an external file.

17   In this context, it's identifying the

18 cross-referenced items. So, for instance, we might

19 have a vendor -- think of a file that has records.

20 Think of that as a row in a table. We might have one

21 vendor's part number and a second vendor's part number

22 in that row. And if this is in a cross-reference

23 index that indicates in this context that those two

24 part numbers are identical or generally equivalent --

25 let's see. What was the next one? Okay.

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1   Cross-reference tables or files. So this is a larger
2   structure, but it contains that same type of
3   information. Vendor part No. 1 is equivalent to this
4   other vendor part No. 2.
5   And by equivalent, I mean identical or generally
6   equivalent.
7   And then by codes, this means that there is an
8   understood structure, understood by the computer and
9   perhaps by the human inputting these codes as to what
10 the codes mean. So in one case --
11   MR. McDONALD: Your Honor, I'm going to
12 object. I don't think his interpretation of codes is
13 in his report.
14 BY MR. ROBERTSON:
15 Q   Doctor, did you do analysis of whether or not the
16 Lawson system employs codes for performing this
17 cross-referencing capability or this means for
18 converting data as the Court has construed the claim?
19 A   Yes, it does.
20 Q   What type of codes?
21 A   That particular code is called a UNSPSC code,
22 United Nations Standard Products and Services Codes.
23 Q   We're going to come back to that, but could you
24 just briefly explain to the jury what type of code
25 that is.

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1   element. This determining whether selected matching
2   items is available in inventory. Can you tell us how
3   the patent describes that process?
4   A   When the customer service representative who is
5   using the system does a search for an item, one of the
6   functions that is supported here is inquiring about
7   what quantity of those items is available in the
8   inventory database. And so if you inquire and you get
9   back a quantity of zero or if you get back a quantity
10 that's less than the number you want, you know that
11 those items are not available in inventory.
12 Q   You indicated there could be a CSR. That's a
13 customer service representative. Does it have to be
14 in the patent?
15 A   No, that's just an example.
16 Q   The claim itself doesn't recite whoever the user
17 is, does it?
18 A   No.
19 Q   I'd like to talk a little bit now about sort of a
20 general overview of the Lawson accused systems and
21 methods that you have examined as part of your
22 analysis. Would that be all right?
23 A   Sure.
24 Q   Do we have a demonstrative that you have prepared
25 as to what you consider the procurement system in the

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1   THE COURT: Why don't you tell me where it is
2   here because that's what the objection is.
3   MR. McDONALD: He's talking about UNSPSC
4   codes, Your Honor. I will agree that's in there.
5   THE COURT: The objection is withdrawn.
6   MR. ROBERTSON: Thank you.
7   Q   In examining this kind of cross-referencing or
8   converting capability, is it described in the patent?
9   A   Yes.
10 Q   Why don't we use the '683 patent, if we can, and
11 go to column 16. That's at tab 2 in the juror
12 notebook specifically at about lines 19 through 27.
13 What's the example being given here as how this
14 cross-referencing or converting process for finding
15 identical or generally equivalent items can be
16 accomplished?
17 A   The general idea here is that a particular part
18 number has been entered into this electronic sourcing
19 system and that particular part number is not
20 available, but the cross-referencing system using the
21 cross-reference index finds that another vendor's part
22 number is the same or generally equivalent, and it
23 substitutes the second part number for the first.
24 Q   Why don't we go to a different claim now, Claim 26
25 of the '683 patent. And I want to focus on this last

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1   various modules to be?
2   A   We do.
3   Q   Now, this was prepared at your direction?
4   A   Yes.
5   Q   What are you intending to illustrate here, sir?
6   A   I'm trying to show the various modules and
7   components that are in the Lawson system, and I've
8   tried to map them by color to the claims of the '683,
9   Claim 26.
10 Q   By the way, Doctor, is your touch screen working?
11 A   Yes.
12 Q   So you might want to, if you need to, you can
13 utilize that capability.
14 A   I can use my pointer.
15 Q   All right. So I'm sorry. I interrupted you. You
16 have got a catalog database icon there. Do you see
17 that?
18 A   Right here. So this is the set of catalogs in
19 electronic form.
20 Q   Actually is that the user sitting at the computer?
21 Do you see the catalog database?
22 A   Yes.
23 Q   Where?
24 A   You're talking about this one.
25 Q   Yes, sir.

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1 A Yeah, okay. So the catalog database is the

2 electronic form of the catalogs all put together so

3 that they can be searched. That is the catalog

4 database.

5 Q Does the Lawson procurement system include a

6 database in its inventory control module?

7 A Yes, it does.

8 Q Can supplier product catalog be loaded into that

9 control module?

10 A Yes, we'll see that.

11 Q What's the selection icon?

12 A Of all the catalogs that are in the database, the

13 user interface provides a way to select one or more

14 that are going to be searched.

15 Q Now, you have all of these modules I see here

16 within a gray box. What are you trying to illustrate

17 there?

18 A The gray box is the Lawson system.

19 Q And these are the various components?

20 A These are components, modules.

21 Q There's an icon there for searching for matching

22 items. Do you see that?

23 A Yes.

24 Q What did you intend to illustrate there?

25 A Using the user interface, one engages a search

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1 program and gives it a search query or initiates a

2 search using a characteristic of a drop down menu.

3 And the search engine then engages and returns items

4 that match the query.

5 Q Did you examine a Lawson software program that

6 permits a user of a Lawson system to perform that

7 functionality?

8 A Yes, the requisitioning system does that.

9 Q You have building a requisition icon here. Do you

10 see that?

11 A Yes.

12 Q Please explain what you're intending to illustrate

13 there?

14 A So in the Lawson system you build a shopping cart,

15 then you add and delete items from it until you're

16 satisfied with it. And then you do a checkout from

17 the Lawson system. And that engages the requisition

18 system and builds the requisition of all the items

19 that you want to order.

20 Q Are you familiar with the term "a shopping cart"?

21 A Yes.

22 Q Is that consistent with your understanding of

23 building a requisition?

24 A Well, it's not the requisition. It's the data

25 structure that can be modified. You can add and

569

1 delete to it. So in computer terminology, we call

2 this a cache, a C-A-C-H-E. So it's a data structure

3 that holds data, and then it's going to be transferred

4 to the requisition module, and it's in the requisition

5 module that the requisition is created.

6 Q All right. Thank you for that correction. So is

7 it consistent with an order list?

8 A The order list is the shopping cart and that's

9 what becomes the requisition.

10 Q Did the Court define what an order list is in its

11 glossary of claim terms?

12 A Yes. A list of desired catalog items.

13 Q Did you apply that construction in doing your

14 infringement analysis?

15 A Absolutely.

16 Q Next you have an icon for generating purchase

17 orders. Do you see that as part of the overview of

18 the Lawson procurement system?

19 A Yes.

20 Q Can you explain that process here?

21 A So we've got our requisition. This is our formal

22 list of the things we want to buy. It might have one

23 item. It might have a hundred items. The items might

24 be from one vendor or they might be from 100 vendors.

25 Whatever that requisition says, the purchase order

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1 module takes that requisition and typically pulls out

2 all of the requisition items that are going to be

3 ordered from a single vendor and creates a purchase

4 order for that vendor. Then it pulls all the items

5 that go to another vendor and creates a separate

6 purchase order for the second vendor and so on until

7 all the items in the requisition have appeared in some

8 purchase order.

9 Q Did you do analysis of any Lawson software program

10 or module that performs that functionality?

11 A Yes, we're going to see that, and it's going to be

12 the Lawson P.O. 100 program. Their purchase order

13 program that converts a requisition into one or more

14 purchase orders.

15 Q Now, you've illustrated a number of arrows between

16 these various software programs or modules that you've

17 identified as part of the overall Lawson infringing

18 system. What are you intending to indicate by those

19 arrows?

20 A Well, the arrows with the single head indicate

21 unit directional information flow. The arrows that

22 are double-headed indicate bidirectional data flow

23 back and forth.

24   So, for instance, the arrow here between selection

25 and searching, you use that user interface to engage

571

1   the search engine. That's one-way data flow.
2   Down here, for instance, purchase orders go out to
3   the Internet, but responses come back. So there's
4   bidirectional data flow there.
5   Q You've got outside of the Lawson system you've got
6   this little cloud that you have illustrated that has
7   Internet in it. What are you attempting to illustrate
8   there?
9   A Well, the cloud is the classic icon for the
10   Internet, meaning lost of networks, lots of computers,
11   you don't necessarily know whether they are, you don't
12   usually care, but the computer can by sending
13   addresses through the Internet can arrive at a
14   particular destination. So here Bio-Rad is an example
15   of a vendor.
16   So by using this route I can send information to
17   the vendor. When the vendor gets that purchase order,
18   it can send a purchase order acknowledgment back to
19   the Lawson software.
20   Q Is there a software module or software program
21   that you did an analysis of that permits the Lawson
22   system, the accused system, to employ the Internet to
23   go out to vendors and obtain information, do searches,
24   and then return data to complete requisitions and
25   purchase orders?

572

1   A Yes. There's a system called Punchout that we'll
2   see that allows us to access vendors. There's also an
3   electronic data interchange software module that
4   allows us to send purchase orders and get purchase
5   order responses.
6   Q You used the term "Punchout." Is that the term
7   that Lawson uses for its software module?
8   A Yes, this is their term.
9   Q Have you seen that term "Punchout" employed in
10   other procurement systems?
11   A Yes, it's a common term of art.
12   Q Now, what's your understanding as to what is meant
13   when they use the term "Punchout"?
14   A So there's the Lawson system. The user engages
15   the Lawson system and using the capabilities of the
16   Lawson system goes to a vendor website, one that's
17   been created for this customer. And so this idea of
18   looking at an external vendor's specialized website is
19   called punching out of the Lawson system.
20   Q Have you done a demonstration of that using a
21   Lawson system?
22   A Yes.
23   Q When this purchase order response comes back from
24   a supplier, what types of information can be in it
25   that might be useful to the user in making its

573

1   selection and determination as to what it might want
2   to purchase?
3   A So when we use the Punchout capability, some of
4   these vendors support the capability of reporting
5   whether the item that you want is available in
6   inventory. And so we can see in what's called the
7   Punchout response, we see on a web page displayed in
8   the Lawson system whether or not the item is available
9   in inventory.
10   And if we're using the electronic data interchange
11   module, the purchase order goes to a vendor, and the
12   vendor can reply, and the purchase order responds as
13   to whether that item is available in inventory.
14   Q So you have this software module within the Lawson
15   system about determining availability and inventory.
16   Do you see that?
17   A Right here, yes.
18   Q I think you may have touched on it, but can you
19   tell us the ways in which this accused Lawson system
20   can satisfy the element of determining the
21   availability of inventory within its accused system?
22   A Yes. So using the Punchout system, I can look
23   into the external catalog of a vendor. And if this
24   vendor supports this capability, I can determine
25   whether the item I want to order is available in

574

1   inventory. That's one1 way.
2   The other way is this purchase order being sent to
3   a vendor and the purchase order response coming back
4   there's two ways to do that.
5   Q Are you familiar with the term EDI?
6   A Electronic data interchange.
7   Q Can you explain to the jury what that is?
8   A So this was big in the 1970s and has gotten even
9   bigger today. When companies want to communicate with
10   each other -- well, let me start with individuals. If
11   you and I want to exchange information, a typical way
12   would be email. So email works for individuals, but
13   it isn't structured. You don't know what's going to
14   be in the email.
15   So electronic data interchange is a set of
16   standardized forms like purchase order, purchase order
17   response, invoice, advance ship notification. And
18   what is standardized about them is the information
19   that's in it is in a particular place and it's of a
20   particular length and it's of a particular type of
21   data so that a computer then doesn't have any problem
22   figuring out what it means.
23   So that's what EDI does. It exchanges information
24   in a structured formal way between companies.
25   Q You indicated that EDI has been available since

575

1   the '70s, but the overall components of this system,

2   they haven't been available since the '70s, have they?

3   A   I don't think so.

4   Q   And you can take known technology and combine it

5   to come up with something new and useful; is that

6   right, Doctor?

7   A   Sure.

8   Q   The converting icon, I think you talked a little

9   bit about this, but in the Lawson system, how do they

10 perform this functionality of the conversion to find

11 similar, identical or generally equivalent items?

12 A   I mentioned these UNSPSC codes. So I'll explain

13 later in detail what they mean, but the gist of it is

14 that by using an 8-digit code, you are drilling down

15 to what's going to be called the commodity level of

16 information. And if multiple items have this same

17 8-digit code, then by the definition of the code they

18 are generally equivalent and substitutable.

19   So the Lawson system uses this UNSPSC code in

20 order to accomplish that task.

21 Q   So now that you have discussed sort of the overall

22 functionality of the system in general terms and how

23 it can perform it, you identified various software

24 programs or modules that Lawson offers to do that

25 functionality. Can they be configured in various

576

1   ways?

2   A   Yes. Certain modules are required and certain

3   modules are optional.

4   Q   Did you prepare a demonstrative to show how these

5   various Lawson procurement S3 modules can be -- these

6   components can build to an infringing system?

7   A   Yes, I have several demonstratives that build on

8   each other to illustrate how the software modules

9   build on each other.

10 Q   Let's go to the first demonstrative you have. And

11 this one is entitled "Lawson's electronic sourcing

12 systems." And you have a yellow box there. What is

13 that?

14 A   So as the name suggests, the platform technology

15 foundation contains the modules that have to be in a

16 functioning Lawson system.

17   Two of those are the Lawson system foundation,

18 which is, again, a set of common computer implemented

19 activities that every software module is going to

20 need. For instance, communication with other modules.

21   The process flow is a module that controls and

22 directs the approval process. So when a requisition

23 comes in, typically a manager approves it, and that

24 approval process is done by the process flow module.

25   So these two are required for all of the S3

577

1   procurement systems.

2   Q   In your analysis and review of the documents and

3   the deposition testimony, did you make a determination

4   that these foundational software modules were required

5   as part of the Lawson infringing system?

6   A   Yes, in the documentation that I read it was very

7   clear that the Lawson system foundation, LSF, had to

8   be installed before you could install the modules of

9   the S3 procurement system. Likewise, the process flow

10 had to be there as well.

11 Q   In your report, you called the Lawson system

12 foundation a prerequisite module. What did you mean

13 by that?

14 A   The LSF must be there before you can load the

15 modules that are the procurement suite.

16 Q   In order to purchase the procurement suite

17 license, the procurement suite, does a customer of

18 Lawson have to license this Lawson system foundation

19 and process flow?

20 A   That's what the documentation says.

21 Q   Well, I think you touched on the process flow

22 already, but let's take a look, if we can, at the

23 Lawson requisition self service installation guide,

24 which is PX 131. It's in binder 3, Dr. Weaver.

25   Is this document is entitled, "Lawson requisitions

578

1   Self Service Installation Guide." Did you review this

2   as part of your preparation for your expert report?

3   A   Yes, I did.

4   Q   So what is this document?

5   A   This document explains to the customer how they

6   should go about installing this requisition self

7   service module. We're going to call it the RSS.

8   Q   If we could go to bar code 4. It's item 4 of this

9   document. There's a box entitled, "System

10 Requirements" there. Do you see that?

11 A   I do.

12 Q   Where is the information relevant to the Lawson

13 system foundation here?

14 A   It says that the following software and hardware

15 requirements must be met before you install the

16 product. And then in the table below, the first row

17 says, "Lawson system foundation."

18 Q   Okay. So before you can install Lawson's

19 requisition self service, one of the requirement

20 components is the Lawson system foundation; is that

21 right?

22 A   That's what this says.

23   MR. McDONALD: Your Honor, I object. It's a

24 little unclear at this point because requisition self

25 service is a different module from the ones we were

579

1 talking about earlier. So I would object as

2 ambiguous.

3   MR. ROBERTSON: It's one of the component

4 modules that Dr. Weaver has already mentioned. We can

5 go back and finish building the blocks if you'd like.

6 Q Let's go back to your building components, if we

7 could. Then we can circle back.

8   So you have got your platform technology here of

9 the Lawson system foundation and the process flow.

10 What is the next software module or program that you

11 need in order to have an infringing system?

12 A The procurement modules that are needed for an

13 infringing system include purchase order, requisitions

14 and inventory control. These are the three that we

15 just saw in the previous documents. And for

16 clarification, the requisition self service is going

17 to sit on top of this.

18 Q But at this point, let's go back, at this point

19 with this platform and these three modules, does that

20 comprise an infringing system?

21 A Yes, it does.

22 Q And you're going to discuss in detail the purchase

23 order module, the requisitions module, and the

24 inventory control module in the context of Lawson's

25 documents and witness testimony?

580

1 A Yes, I am.

2 Q Well, let's go to the next build then. So the

3 next thing you placed on top of this platform here

4 we're building is this module or software program

5 called "requisition self service." Do you see that?

6 A I do.

7 Q Why did you do that? Why did you make the

8 arrangement like this?

9 A Because the requisition self service is a module

10 that is modern and user friendly. So it has a web

11 based interface. But it uses the functionality of the

12 requisition module below it.

13   So requisition self service can be installed only

14 if you already have the requisition module beneath it.

15 So you can think of, in software terms, the

16 requisition module provides a certain set of

17 capabilities and functionalities, and requisition self

18 service is a user friendly overlay on top of that.

19 Q Does it permit more end users to utilize the --

20 A Yes. By user friendly, this means that you don't

21 need as much training. You don't need to be as much

22 of a specialist. It's more for the guy on the street.

23 Q Does the requisition self service permit Lawson to

24 distribute the functionality for this electronic

25 sourcing and procurement to a greater number of

581

1 individuals within a company, for example?

2 A Yes, it does.

3 Q Do you know whether or not Lawson when it licenses

4 this requisition self service module, licenses it on

5 the basis of the number of potential users of that

6 software module?

7 A Yes.

8 Q Do they?

9 A Yes.

10 Q Just so I'm clear, the requisition self service

11 module can't work without the requisition module that

12 sits upon the Lawson system foundation and process

13 flow flat on technology foundation. Is that what

14 you're indicating?

15 A Yes, that's correct.

16 Q Is there another module that you did an analysis

17 of?

18 A Yes. So there's a Punchout module, which I kind

19 of indicated for. It sits on top of requisition self

20 service.

21 Q Are we going to see some documentation and have

22 you reviewed some testimony in which the purchase

23 order requisitions and inventory control modules that

24 are all the S3 procuring modules require the Lawson

25 system foundation?

582

1 A Yes.

2 Q Do they?

3 A They do.

4 Q So just going back then to Plaintiff's Exhibit

5 No. 131, which was the --

6   THE COURT: Go back to the other one just a

7 minute.

8   Are you saying that you can't use the

9 procurement Punchout without also using the RSS, the

10 S3, and the foundation?

11   THE WITNESS: Yes, Your Honor.

12   THE COURT: All right. Go ahead.

13   MR. ROBERTSON: I was going to come to that,

14 Your Honor, but thank you.

15 BY MR. ROBERTSON:

16 Q Let's go back to that for a second since the Court

17 has raised the question.

18   So if I'm going to have procurement Punchout, that

19 capability to go out over the Internet and go to

20 individual vendors for specially created Lawson vendor

21 website in order to do my shopping, I must have

22 licensed requisition self service, the three S3

23 procurement modules, and the platform technology

24 foundation including Lawson's system foundation and

25 process flow; is that right?

583

1   A   That's correct.

2   Q   Is that reflected in the documents and the

3   testimony that you have seen?

4   A   Yes, it is.

5   Q   And just so we're clear, procurement Punchout

6   sitting alone, can it perform the functionality of

7   going out over the Internet to individual vendors in

8   order to do this shopping function?

9   A   No.

10   Q   Requisition self service sitting alone without the

11   S3 procurement modules and the platform technology,

12   can it perform any of the functionality that's

13   described in the patents?

14   A   No.

15   Q   Let me just be clear then. So Punchout

16   procurement alone in your opinion doesn't infringe any

17   of the claims of the patent?

18   A   Not by itself.

19   Q   Well, requisition self service alone doesn't

20   infringe any of the claims of the patent?

21   A   Correct.

22   Q   If we could go back to just the yellow and blue.

23   In this configuration, are you going to have opinions

24   with respect to whether or not the functionality

25   provided by the software here, the capability of the

584

1   software infringes the claims of the patent?

2   A   I'm going to have an opinion on that.

3   Q   Why don't you just preview that opinion?

4   A   And my opinion is that this is an instance of an

5   infringing system.

6   Q   Let's add the next module. Is this going to be

7   also instances of infringing activity under the claims

8   at issue here?

9   A   Yes, it is.

10   Q   Let's add the next module. Is this also going to

11   be instances of infringing activity under the claims

12   that are at issue here?

13   A   Yes.

14   Q   Let's add the next module. Here's a module that

15   sits on these S3 procurement modules called the

16   electronic data interchange. You talked a little bit

17   about that. Is that a module that Lawson offers as

18   part of its infringing system?

19   A   Yes, it is.

20   Q   And that is sitting on top of your S3 procurement

21   modules and your platform technology modules. Do you

22   see that?

23   A   That's right.

24   Q   With just the electronic data interchange and the

25   S3 procurement modules and the platform technology

585

1   foundation, can that be an instance of infringing

2   activity under the asserted claims?

3   A   Yes, it can.

4   Q   Again, just to be clear, though, because this can

5   be a little confusing. I don't need all of these

6   modules in order to infringe the claims, do I?

7   A   You do not.

8   THE COURT: Are you at a transition point?

9   MR. ROBERTSON: This would be a good time to

10   break, Your Honor.

11   THE COURT: All right, ladies and gentlemen.

12   We'll have the morning recess for about 20 minutes.

13   And, if you will, just take your notepads with you.

14   That will be fine.

15   (The jury is out.)

16   All right. We'll be in recess for 20

17   minutes.

18   (Brief recess taken.)

19

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586

1   THE COURT: All right.

2   Q   Dr. Weaver, this platform technology foundation, the

3   yellow box that has the Lawson Software foundation, you are

4   aware that Lawson sells other, what they call a suite of

5   business solutions for doing financial accounting, things like

6   that, human resource, business processing; correct?

7   A   Yes, I saw that in their documents.

8   Q   Those software modules, can they also sit on this platform

9   technology foundation?

10   A   Yes, they can.

11   Q   By adding additional applications to this platform

12   technology foundation, does that avoid infringement in your

13   opinion?

14   A   It does not.

15   Q   Is that consistent with your opinion that by adding

16   functionality, you can't avoid infringement if at least you

17   have the claimed functionality that is satisfied by the

18   elements at issue in the claim?

19   A   For any claim, if you have all the elements of a claim,

20   adding additional functionality does not change the

21   infringement picture.

22   Q   If we widen this platform technology a little bit and on

23   top of it we put human resource, the software module, we put

24   the financial accounting module and some other kind of module,

25   adding those other modules wouldn't avoid infringement if we

587

1   had, in this instance at least, the yellow box and the blue

2   box; right?

3   A   That's correct.

4   Q   Even if we had those other modules and we had the yellow

5   box, the blue box, the green box, the brown box, and the purple

6   box, and four other boxes sitting on the platform, would that

7   still be an infringing configuration?

8   A   This is an infringing configuration. So is this, so is

9   this, so is this. So adding more to that doesn't change that

10   picture.

11   Q   At a minimum, just so we're clear again, we need the blue

12   and the yellow.

13   A   That's the minimum.

14   Q   Would you take a look at binder five. This is going to be

15   Plaintiff's Exhibit Number 211. Can you tell us what this is?

16   A   This is the Lawson Punchout -- the procurement Punchout

17   installation guide that's going to tell you how to install this

18   Punchout application.

19   Q   And when was this published?

20   A   This was May 2008.

21   Q   Why don't we go to the page that is bar-coded by page ten,

22   but it is Bates labeled 4788 called installation overview.

23   A   Okay.

24   Q   And do you see there, there are system requirements

25   identified?

589

1   What is being illustrated -- first, what's it entitled?

2   A   The Lawson procurement Punchout network architecture

3   example.

4   Q   And can you help tell us what this is illustrating?

5   A   This is complex. This is going to illustrate the

6   communications flow as one moves from a Lawson system through

7   the Punchout process into an external vendor's website with

8   catalog and database and so on.

9   It's going to explain how we get there and then how we get

10   back carrying with us whatever items have been added to the

11   shopping cart at the external vendor and then how that shopping

12   cart gets loaded into the Lawson shopping cart.

13   Q   Are we going to see this in one of your demonstrations?

14   A   We are.

15   Q   So that would probably be the best way to understand this

16   complex process?

17   A   Well, this is the way you understand the communications

18   flow. You will simply observe it in the demonstration.

19   Q   Next exhibit is going to be PX-97, Dr. Weaver. It's in

20   binder one. Do you have it, Doctor?

21   A   I do.

22   Q   What is this document?

23   A   This is the requisitions user guide, so this one is going

24   to tell us how to use the requisition module.

25   Q   Is that one of the modules that was in your illustration?

588

1   A   I do.

2   Q   And under system requirements, it says, listed below are

3   the software requirements for running Lawson procurement

4   Punchout. These requirements must be met before you begin

5   installing. Do you see that?

6   A   Yes.

7   Q   What are the components, the Lawson server requirements

8   for the Lawson procurement Punchout module?

9   A   It's the S3 Lawson system foundation, server applications,

10   and process flow designer.

11   Q   Is that consistent with your build there, that

12   demonstrative you had as to what were some of the foundational

13   software requirements?

14   A   Yes.

15   Q   Also, it says, Lawson procurement Punchout server

16   requirements. Do you see that as well?

17   A   I do.

18   Q   What is the additional component there that's required in

19   order to be able to install Lawson procurement Punchout?

20   A   You must have the Lawson requisition self-service.

21   Q   And, so, is that consistent with the illustration you had

22   for us?

23   A   Certainly is.

24   Q   Can you turn to the page that is actually -- the barcode

25   at page 12 has the Bates label that ends 4790, Exhibit 211.

590

1   A   It was.

2   Q   Does Lawson provide this guide to its customers?

3   A   It does.

4   Q   Let's go to the page then, barcode 11, which is Bates

5   label 1108?

6   A   Okay.

7   Q   And at the top, it says overview of requisitions?

8   A   Right.

9   Q   What significance on this overview of requisitions would

10   you like to show the jury?

11   A   That first paragraph that explains that the Lawson

12   requisitions application lets you create requests with demand

13   on stock and demand on vendors, replenish cart par locations,

14   and process and manage requisitions. So we're going to be

15   interested in that demand on vendors and managing requisitions.

16   Q   What next of significant on this page would you like to

17   point out to the jury?

18   A   We move down here to creating requisitions. When you

19   create a requisition, you request items from inventory or from

20   vendors. The requisitions application provides different

21   methods for creating requisitions that allow you to customize

22   the requesting process to suit your business needs.

23   Q   So what is Lawson telling us here with respect to creating

24   requisitions --

25   A   Sorry. That confirms that Lawson is able to create a

591

1   requisition to request items from vendors.

2   Q   Under the heading processing requisitions, what, if

3   anything, would you like to point out to the jury?

4   A   The first paragraph here, and then its continuation on the

5   next page, the approval process places monetary limits on the

6   amount a requester can request. The requisitions application

7   provides options for an approver to authorize, reject, or

8   un-release for requisition.

9   Moving on to the next page at the end of the first line,

10   purchase orders are created from requisitions in the purchase

11   order application to fill demand on vendors.

12   Q   And what is Lawson indicating here is the capability of

13   this requisitions module?

14   A   So it's confirming that the requisitions module has to be

15   integrated with the purchase order module if we're going to be

16   able to use it to create purchase orders. Actually do -- yes,

17   to process requisitions into purchase orders.

18   Q   Can we go on to the next page, Bates labeled -- that is

19   barcoded 13 and ends with the Bates label 110. It says at the

20   top, how requisitions integrates with other applications. This

21   section explains how the requisitions application interfaces

22   with other Lawson applications. What of interest to the jury

23   would you like to point out here?

24   A   That here in the diagram, we have -- so we have

25   requisitions sitting in the middle of this -- this is a

592

1   software architecture explaining how these modules interact

2   with each other and how information flow goes from module to

3   module, and we're going to be interested in the interaction

4   between the requisition and the inventory control and,

5   likewise, the requisition and the purchase order.

6   Q   There are bidirectional and unidirectional arrows which

7   you mentioned earlier. Can you tell us what your understanding

8   is they are illustrating?

9   A   Sure. Inventory control is providing information to the

10   requisition module. Requisition is exchanging information in

11   both directions with purchase order.

12   Q   Is there anything else of interest you want to point out

13   on that page?

14   A   That's it.

15   MR. ROBERTSON: Can we go to the next page which is

16   Bates labeled 111.

17   Q   What, if any, interest on this page would you like to

18   inform the jury about?

19   A   In the inventory control description, it says that the

20   requisitions application receives item information from the

21   inventory control application. Now, that was that

22   unidirectional arrow that we just saw. The item numbers and

23   descriptions used by requisitions are stored in the inventory

24   control application. So it needs that information.

25   Q   And item numbers in description, are they the item numbers

593

1   in the description of products that are available?

2   A   Yes. Products that are being requested, being

3   requisitioned.

4   Q   Under the heading purchase order, what is Lawson telling

5   us there as to the capability of the requisitions application

6   interacting with the purchase order application, the module?

7   A   It says that the requisitions application sends order

8   requests for goods or services to the purchase order

9   application. Purchase orders can then be created automatically

10   to fill the order. The requisition application receives item

11   costs from price agreements defined in purchase order, and

12   that's why we had the bidirectional arrow between requisitions

13   and purchase order. Information flows both ways.

14   Q   Can you turn to the next page of Exhibit 97 which ends

15   with Bates label 112, and there's a heading there, process

16   flow. What is Lawson indicating about the functionality of the

17   requisition module here with respect to process flow?

18   A   It says that the requisitions application sends a request

19   for service to the Lawson process flow application. The

20   predefined services for the requisitions application are the

21   requisitions approval service and the rush item processing

22   service. So this says that the process control application has

23   to be integrated with requisitions if we're going to be able to

24   support the approval mechanism.

25   Q   If you'll turn now to page 63, barcode -- or the Bates

594

1   label ending 160, the page at the top says what is a price

2   agreement. Do you see that?

3   A   I do.

4   Q   Do you have an understanding as to what a price agreement

5   is?

6   A   Yes.

7   Q   How does Lawson define price agreement here?

8   A   A price agreement is a pricing tool set up in the purchase

9   order application that provides the item costs which is the

10   unit cost for purchase order and requisition lines.

11   Q   What, if any, significance does that have to this case?

12   A   Well, it's telling us here that -- excuse me -- that the

13   customer needs to set up this price agreement with the vendor

14   so that the vendor can electronically say what the cost of the

15   items is going to be.

16   Q   Does this relate to the testimony earlier you had as to

17   what the vendor price agreements were?

18   A   Yes, it does.

19   Q   Lawson also references here a catalog or quote price

20   agreement?

21   A   Yes.

22   Q   What significance does that have to your opinions?

23   A   This says that a catalog or quote price agreement is a

24   list of items and unit costs supplied by a vendor. You can set

25   up the cost defaulting structure at the company level to

603

1   A   So between the purchase order and the requisitions -- we

2   saw those as two circles with the arrow between them. As they

3   exchange information, they're going to do it in what we call

4   asynchronously meaning they are not aligned in time.

5   The purchase order interface goes out and looks for work

6   to do, and if it finds a requisition in a file that needs to be

7   created into purchase orders, it gets that file, reads it, and

8   processes it.

9   So the significance that we're going to see when we do the

10 demonstration is that you will see a delay as we create a

11 requisition, and then we have to have another step to create

12 the purchase order. But you will see that.

13 Q   Why is it necessary, though, that a requisition include a

14 vendor?

15 A   Oh, well, how would you know who you are going to buy it

16 from if you didn't have a vendor?

17 Q   Can we go to page 155 of this exhibit, and it ends with

18 Bates label 173, and it's referencing here using EDI to issue

19 purchase orders. What significance in this page of Exhibit 108

20 would you like to point out to the jury?

21 A   We'll start with the first three paragraphs. EDI is the

22 paperless exchange of documents between trading partners.

23 Companies that use Lawson's EDI capability can communicate

24 instantly with suppliers and vendors. Data is transmitted from

25 one company's computer to another electronically.

605

1   orders can be issued to vendors using internet email. This

2   kind of issue method is possible by using Lawson procurement

3   Punchout or another third-party tool that's capable of email

4   delivery. With Lawson procurement Punchout, you also need

5   Lawson requisition self service to get the PO dispatcher or

6   sweeper.

7   Q   So is that consistent with your diagram earlier in which

8   you need requisition self service to support the Punchout

9   capability?

10 A   That's correct.

11 Q   Is there a description on this page of Plaintiff's Exhibit

12 Number 108 that explains how the procurement Punchout

13 application works?

14 A   Yes, it's the next paragraph below. So Lawson procurement

15 Punchout lets users of Lawson requisition self service order

16 supplies from a specific vendor's website. With Lawson

17 procurement Punchout, a vendor page is linked to a shopping

18 icon, called a Punchout, on the Lawson requisition self service

19 home page.

20   When the user chooses a specified vendor, that vendor's

21 website catalog appears. From this catalog, Lawson requisition

22 self service users can choose items to order. By separate

23 agreement between the customer and the vendor, the vendor

24 displays the customer's special cost information for catalog

25 items and can limit the catalog items that are displayed.

604

1   The basic transaction for all EDI purchasing is the

2   electronic purchase order. With electronic purchase orders,

3   EDI users can order materials from vendors electronically.

4   After receiving a purchase order, the vendor returns a detailed

5   purchase order acknowledgment to the client. This

6   acknowledgment summarizes the information on the purchase order

7   and validates the order's authenticity.

8   Q   What, if any, relevance does that have to your opinions,

9   Doctor?

10 A   Well, what we are going to see is that every purchase

11 order that goes out through EDI, called a PO 850 transaction,

12 EDI 850 transaction is going to generate a response, the

13 purchase order acknowledgment which is EDI 855, and that's

14 where there is the opportunity for the supplier to tell the

15 customer whether or not the order can be filled and whether or

16 not the items that are being ordered are available in

17 inventory.

18 Q   This availability in inventory, is that of relevance to

19 the claims that are being asserted here?

20 A   Yes, it is.

21 Q   There's a heading called using internet email to issue

22 purchase orders?

23 A   Right.

24 Q   How does Lawson indicate this process works?

25 A   So this first paragraph under that heading says, purchase

606

1   When users have filled their shopping carts and checked

2   out from the vendor website, the chosen items and their cost

3   are returned to the Lawson server where a requisition is

4   created using the Lawson requisition self service application.

5   A purchase order is then created from the requisition.

6   After the requisition is interfaced into the purchase

7   order application, the Lawson procurement Punchout enables the

8   transmission of purchase order documentation back to the vendor

9   so that the vendor can fill the order.

10 Q   Now, you talked about this Punchout capability a little

11 bit before, but, again, just since that was a lot of

12 information to take in, can you give us a high overview of what

13 is actually the functionality that's going on here --

14 A   Yes.

15 Q   -- that's being performed by the Lawson procurement

16 Punchout module?

17 A   Right. So we had that complicated diagram that we

18 essentially skipped, but what it was documenting was the data

19 transfers. So when the Lawson system punches out to this

20 special vendor website that has been created for this

21 particular customer, it first has to have a handshake. By that

22 I mean that information is transmitted in both directions where

23 the Lawson application and the vendor website authenticate each

24 other so that they know that they are valid. So they exchange

25 some secret information. That's how they authenticate.

607

1   So after that security handshake, then the user is given

2   access to the specialized external website, can browse, can

3   search, can put items in a shopping cart, and then when the

4   shopping session is over, the user can click check out, and the

5   information in that external vendor's shopping cart is returned

6   to the RSS module.

7   Q   The RSS module being?

8   A   Requisition self service. Thank you. And so now we know

9   from there -- from that returned information we know the

10   vendor, we know the cost, we know the availability, and then

11   within the requisition self service module, we can now turn it

12   into a requisition and then a purchase order, and then using

13   EDI or email, that purchase order can then be sent to the

14   vendor.

15   Q   Now, you mentioned requisition self service when we were

16   talking about the Punchout capability. Before in your diagram

17   as to how these various modules needed to be configured, did

18   Punchout procurement need to sit on top of requisition self

19   service?

20   A   Yes. We just saw documentation saying that's how it had

21   to be configured.

22

23   (Discussion off the record.)

24

25   MR. ROBERTSON: Thank you for the brief indulgence.

608

1   Q   Can we go to page 158 of that exhibit. At the top is the

2   PO acknowledgment report. What is a PO acknowledgment report?

3   Can you tell the jury what, if any, significance this page has

4   to your opinions in the case?

5   A   First paragraph and the first two bullets. Let's

6   highlight those. So the PO acknowledgement report is a

7   combined summary and exception report that lists processed

8   purchase orders. If there is an error processing a purchase

9   order or differences between a purchase order and the

10   acknowledgment, there will be message lines under the purchase

11   order identifying the error or the difference. Examples of

12   errors and differences listed include the item is rejected, the

13   item is on backorder.

14   So those are examples of errors that might occur when the

15   purchase order is sent. It may be the testimony is not

16   available anymore. The purchase order acknowledgment can tell

17   the RSS system that that's the case so the user is informed.

18   Q   So communication back to the user that the item might be

19   on backorder, is that of any relevance that this requisition

20   self service and Punchout capability, Punchout module has this

21   capability?

22   A   Yes, because if you'll recall, one of the claims had as

23   its last element the determining of whether or not an item was

24   available in inventory. So this is a mechanism that makes that

25   possible.

609

1   Q   I'd like you to turn to Plaintiff's Exhibit Number 112

2   which is in binder two, Dr. Weaver, if you would. And can you

3   tell us, what is that document, sir?

4   A   The inventory control user guide that is going to explain

5   to us how this module seen in my demonstrative, how this module

6   works.

7   Q   What is the date of this document?

8   A   November of 2008.

9   Q   Are you familiar with the document?

10   A   Yes, I've read it.

11   Q   And did you review it for purposes of rendering your

12   opinions?

13   A   I did.

14   Q   Why don't we turn to the page that has the barcode 13 and

15   the Bates label 261. And this is chapter one, overview of

16   inventory control?

17   A   Right.

18   Q   What would you like to point out to the jury with respect

19   to this inventory control module?

20   A   The first paragraph.

21   Q   Okay.

22   A   The Lawson inventory control application lets you define

23   items and manage inventory. The application receives items

24   that you purchase from a vendor or replenish from another

25   location and moves out items by issue, transfer, or allocation.

610

1   So this is telling us that the item master is the central

2   table of the database that contains a list of all of the items

3   that are available.

4   Q   So what component is used to define these to define those

5   items and manage the inventory?

6   A   That's item master.

7   Q   Let's look at page 31 of Exhibit 112. This is entitled

8   setting up purchase order?

9   A   Right.

10   Q   If a system wants, a system user wants to be able to

11   purchase items from vendors, what does Lawson indicate that the

12   inventory control module, how it must operate with any other

13   applications?

14   A   Well, in the very first paragraph, it says, if you

15   purchase inventory from vendors, you must set up the purchase

16   order application. And then you can see below it, there's a

17   series of steps of how to set up purchase orders.

18   Q   Is that consistent with your diagram that showed the

19   foundational building blocks for an infringing system?

20   A   Yes.

21   Q   That was part of the blue block that was above the Lawson

22   platform, the yellow block?

23   A   So inventory control must be integrated with the purchase

24   order. Those two modules were on the same level in the blue

25   box.

611

1   Q   Can we go to barcode -- page 70 in this document. If I

2   can find it myself. The Bates number ends with 318.

3   MR. McDONALD: Your Honor, I hate to interrupt. Our

4   Exhibit 112 ends at page 64 of the 301.

5   MR. ROBERTSON: Mr. McDonald, what page does it end

6   in?

7   MR. McDONALD: My version ends at page 64.

8   Q   So we were at page 70 in Plaintiff's Exhibit 112 at the

9   Bates label that ended 318. And you just referenced this item

10 master, and in this document, this Lawson document says what is

11 an item master. What does Lawson tell us as to how it defines

12 an item master?

13 A   In the first sentence it says, an item master is a file

14 which holds information about an item regardless of where that

15 item is used.

16 Q   So what, if any, relevance does that have to the opinions

17 you're going to be offering in this case?

18 A   Well, it confirms that the item master is going to be

19 utilized by requisitions and by purchase orders and that it is

20 the central repository where most of the vendor data lies.

21 Q   And can this item master data store both stock and

22 nonstock items?

23 A   Yes, both.

24 Q   By nonstock items, what do you mean by that?

25 A   Those are items that would be ordered from an external

613

1   collection of items and associated information including

2   various things?

3   A   Consistent.

4   MR. McDONALD: I object to the characterization of

5   the Court's construction.

6   THE COURT: I didn't hear the last part.

7   MR. McDONALD: Maybe it would be helpful just to put

8   up the construction itself.

9   THE COURT: All right.

10   MR. ROBERTSON: Sure. Do you have glossary terms?

11 The jury has them.

12   THE COURT: The jury has them in the notebook.

13 Q   So let me --

14   THE COURT: What he objected to is you abbreviated

15 the term. Isn't that what your objection was?

16   MR. McDONALD: That is correct, Your Honor.

17   MR. ROBERTSON: I misunderstood. Let me go back

18 then.

19   THE COURT: That's all he's objecting to.

20   MR. ROBERTSON: Thank you for the clarification, Your

21 Honor.

22 Q   There's a catalog definition; correct?

23 A   Yes.

24 Q   You have it, and the jury has it. And it says it's an

25 organized collection of items and associated information

612

1   vendor.

2   Q   What information about the items is maintained in the item

3   master?

4   A   So that would be things like item number, the item

5   description, the unit of measure, the cost, the vendor name,

6   and other attributes that the user can define. So there's a

7   set of things that must be there like vendor name and cost and

8   unit of measure, and there's also, as we're going to see later,

9   there's some user defined fields so the user can put in

10 information that the user thinks is important about the

11 particular item.

12 Q   Did it also have commodity and classifications codes?

13 A   Oh, that's right, it can. There's special place for

14 UNSPSC codes, and there's programs to load that information.

15 Q   Refresh the jury, if you would again, on what a commodity

16 classification code is at a high level, if you would?

17 A   Yes. So using these UNSPSC codes, these are eight-digit

18 codes. When you use all eight digits, it is a classification

19 for items that are generally equivalent or substitutable. So

20 it's a way of finding similar items.

21 Q   So this various data points, data information that you

22 just identified, item number and item description and unit of

23 measure and pricing, are all those -- that type of data and

24 information consistent or inconsistent with the Court's

25 construction of an associated -- or, excuse me, organized

614

1   published by a vendor which includes suppliers, manufacturers,

2   and distributors which preferably includes, and then there's a

3   number of specified things, part number, price, catalog number,

4   vendor name, vendor ID, a textual description of the item, and

5   images of or relating to the item. Do you understand that

6   that's the Court's construction?

7   A   Yes, I do.

8   Q   Is that consistent or inconsistent with the various item

9   data that can be included in the item master?

10 A   Consistent.

11 Q   The vendor cost information, is that contained in the

12 vendor item table in a purchase order module?

13 A   Yes.

14 Q   Are we going to see that at some point?

15 A   Yes.

16 Q   If we can, in the same exhibit, going back to barcode page

17 46, Bates label 294?

18   THE COURT: Excuse me just a minute. Are you saying

19 that in your view, item master fits the defined term catalog?

20   THE WITNESS: Yes, along with the vendor item table.

21   THE COURT: You mean you have to have the vendor item

22 table and the item master for it to be a catalog?

23   THE WITNESS: Yes, sir.

24 Q   Let me have PX-108 again. Let me just ask you a question,

25 Doctor, about this. Is a vendor associated with the item data

627

1 training.

2 Q   Can you turn to the page that is barcoded 18 which ends

3 with a Bates label 491, and there is a heading there called

4 prerequisite applications setup. Why is this significant to

5 your opinions?

6 A   As it says, before you can use the Lawson requisitions

7 self service application, you must set up other Lawson

8 applications. The prerequisite applications affect the way

9 processing occurs in the Lawson requisitions self-service

10 application. So as I showed in my demonstrative, this sits on

11 top of our modules.

12 Q   I want to turn to the next page and that first bullet

13 point.

14 A   Before you can create requisitions, you must set up the

15 requisitions application including requester's requesting

16 locations and approval codes if used.

17 Q   Why don't we turn to page 22 of the document, ends with a

18 Bates label 495. There's a heading called setting up the

19 purchase order application?

20 A   At the top.

21 Q   What did you consider on this page, if anything, when you

22 were doing your analysis?

23 A   The very first sentence. Before you can use the

24 application, this is the purchase order application --

25   THE COURT: That doesn't say that. It says "before

628

1 you use," not "before you can use."

2   THE WITNESS: Thank you, Your Honor. Before you use

3 the application, you must define purchase order vendors and

4 locations.

5 Q   What, if any, significance did that have to your opinions?

6 A   That the purchase order and requisition self service have

7 to work together, that PO has to be present before RSS can

8 work.

9 Q   Let me also take you back to page 21 of the document which

10 ends 494. That is entitled setting up the inventory control

11 application?

12 A   Right.

13 Q   What, if any, significance on this page for your opinions,

14 Doctor, would you like to point out to the jury?

15 A   The first sentence. Before you set up the requisitions

16 application, you must set up the inventory control application.

17 Q   Thank you. Is that consistent with your understanding in

18 the diagram that you put together to illustrate?

19 A   Yes, it is.

20 Q   Can we go to page 27 which ends with Bates label 500?

21 This page is entitled defining categories optional; do you see

22 that?

23 A   I do.

24 Q   They are describing or discussing the UNSPSC. Do you see

25 that?

629

1 A   Yes.

2 Q   What, if any, significance does that have with respect to

3 the requisition self server module?

4 A   So these first four paragraphs explain the purpose, and

5 then down below are instructions on how to do this. The

6 categories task is designed to use UNSPSC, United Nations

7 Standards Products and Services Codes. Categories let you

8 search for items by category.

9   After you import UNSPSC codes, you can assign them to

10 items using item master. IC 11.1 is one of these programs.

11 The codes have four levels: Segment, family, class, and

12 commodity. These levels create an item hierarchy and let you

13 search each level for items in the item master file. These

14 codes are attached to items on IC 11. That's the item master.

15   After you define categories, you can click on a category

16 top level to open the segment tree to the product, family,

17 class, commodity, branches, and items. You select items at any

18 of the levels.

19 Q   Okay. Is this the same kind of UNSPSC classification

20 codes that can be used to do the converting as defined by the

21 Court that we saw before in, I believe it was the inventory

22 control module?

23 A   Yes, they are.

24 Q   So then this is available functionality as part of the

25 requisitions self-service application as well?

630

1 A   Right. This is part of RSS.

2 Q   Let me direct you, if I could, Dr. Weaver, to Plaintiff's

3 Exhibit Number 109 which is in volume two. Have you seen this

4 document before?

5 A   Yes, I have.

6 Q   What is it?

7 A   This document is entitled S3 EDI for supply chain

8 management. This was reviewed during the depositions of the

9 Lawson personnel.

10 Q   Let me go to page Bates labeled five of this document that

11 ends -- excuse me, barcode five that ends with the Bates label

12 618. It's entitled Lawson S3 EDI for supply chain management.

13 Do you know what the S3 product is?

14 A   Sure. It's the Lawson procurement suite.

15 Q   Can you define that with respect to the modules that

16 you've identified in your diagram?

17 A   Yes; requisitions, purchase order, and inventory control.

18 Q   What significance is in this particular page of

19 Plaintiff's Exhibit 109?

20 A   The first paragraph explaining what this does. It links,

21 or rather it says links your enterprise to its trading partners

22 to electronically send transactions such as purchase orders,

23 price/catalogs, and invoices electronically.

24 Q   So using this application, can you receive electronically

25 transmitted catalogs from suppliers?

631

1   A   Yes, you can.

2   Q   Now that we've gone through some of the various -- and

3   overviewed some of the various different Lawson Software

4   modules that can be used to implement these electronic

5   procurement systems, do you have any demonstrations that you'd

6   like to do to show the Lawson system in operation?

7   A   First demonstration would show the category search

8   feature.

9   Q   And you have this, these demonstrations, as I understand,

10   both in captured screen shots -- is that right -- captured

11   software and also in hard copies?

12   A   That's right.

13   MR. ROBERTSON: Your Honor, I'm going to be offering

14   both those for ease of review at the appropriate time.

15   Q   How were you able to capture a demonstration of the system

16   using the Lawson Software?

17   A   So Lawson provided a demonstration system that included

18   these modules that we've been talking about, and it runs on a

19   laptop. So we used -- we practiced to get the demo correct in

20   the sense that it showed what I wanted it to show, and then we

21   used software that was present on the machine that we were

22   given that did a realtime recording of whatever was on the

23   screen. So it's a realtime movie capture.

24   Q   Who provided that software?

25   A   That was provided by Lawson on the machine we got. So as

632

1   we did these demonstrations, we used that Lawson-provided

2   software to create a realtime movie which we saved and which

3   now we're going to play back.

4   Q   Did that laptop come with item data?

5   A   Well, it came with some item data which turns out to be an

6   issue. The database that we were provided from Lawson was

7   actually pretty sparse, so, yes, it had some items in there,

8   but it wasn't fleshed out like a production system would be.

9   Q   In order to demonstrate some of the capabilities and

10   functionality of, say, comparison shopping or using the UNSPSC

11   codes to identify goods that are similar, identical, or

12   generally equivalent, do you need data, item data in the

13   database to demonstrate that?

14   A   Absolutely.

15   Q   And if you don't have, for example, a sufficient number of

16   black pens to compare, or if you have only have one black pen

17   and you're searching for black pens, can you demonstrate some

18   of the functionality of the system if that item data is not

19   there?

20   A   That's right. Without equivalent items, there are no

21   equivalent items to be found.

22   Q   So were you aware that a request was made to Lawson to

23   provide additional data on this demonstration laptop that they

24   gave us so that we could demonstrate the functionality of the

25   system?

633

1   A   Yes, I'm aware of that.

2   Q   And what was your understanding as to what the outcome of

3   that was when the requests were made?

4   A   Well, I don't know the details. What I know is that

5   eventually a Lawson consultant was hired to help load some

6   additional data. Even so, three of the demonstrations that I'm

7   going to give were on the system as provided by Lawson. Only

8   one needed additional data loaded.

9   Q   And a Lawson employee or personnel worked with ePlus

10   personnel to help them load additional data -- excuse me.

11   Worked with ePlus's counsel to load additional data on this

12   laptop for that one presentation?

13   A   That's my understanding.

14   Q   Now, based on the documents you've reviewed and based on

15   testimony reviewed, do these Lawson accused procurement systems

16   typically come with lots of item data?

17   A   Well, when the database is loaded, the witnesses said that

18   there are typically hundreds of catalogs and thousands,

19   sometimes tens of thousands of items.

20   Q   So with that kind of robust data in the database, it's

21   easier to show the full functionality of the system; is that

22   fair to say?

23   A   That's fair to say. However, we're going to do it.

24   Q   All right. Then as I understand it, three of the four

25   demonstrations were just as the laptop was provided to counsel

634

1   for ePlus?

2   A   Yeah. We could say out of the box, the box being the

3   laptop.

4   Q   One being with the additional data that Lawson assisted

5   ePlus's counsel in loading; is that right?

6   A   That's correct.

7   Q   The first demonstration you have, what do you want to

8   illustrate?

9   A   I want to illustrate the category search in which we can

10   find generally equivalent items and then we can find other

11   items and build a requisition, and then we can build one or

12   more purchase orders from that requisition.

13   Q   Okay. And did you direct the preparation of this

14   demonstration?

15   A   Yes, I did.

16   Q   All right. If we can, before we do that, just so we can

17   orient the jury as to what they're going to see, can we see

18   claim three and claim 28 side by side on the screen?

19   Now, both these claims, claim three being the system claim

20   and claim 28 being a method claim, has this element concerning

21   converting data relating to a selected matching item and

22   associated source to data relating to an item in a different

23   source; do you see that?

24   A   Yes. That's the sixth element.

25   Q   The Judge has construed both these claim terms; correct?

635

1   A   Yes.

2   Q   And I'm not going to go through it again because we read

3   them at one point, but the jury has them in their glossary.

4   And, of course, all the other elements need to be there as

5   well. Are we going to be seeing, as we walk through this

6   demonstration, the existence of these other elements that you

7   described?

8   A   Yes.

9   Q   Why don't you go ahead.

10 A   All right. So Mike is going to play this movie, and

11 you'll see there are some waits involved in here, but that's

12 just because it's recording exactly what was seen.

13 Q   Stop here for a second and let me ask you a question here.

14 There's a box in the lower right-hand corner. Is that part of

15 the Lawson system or not part of the Lawson system?

16 A   That was part of the system provided, and it's part of the

17 realtime capturing software, so you can -- what's showing --

18 can you see this? So what you are seeing right now is a clock

19 that says we're 12.4 seconds into the movie, and then there's a

20 button that if you were on the real laptop, you could click it

21 and it would toggle from pause to play to pause to play. We've

22 chosen just to let it play.

23 Q   If we wanted to --

24   MR. McDONALD: Your Honor, could I get a

25 clarification on which exhibit, and is there a paper version of

637

1   A   Sure. Exactly. So I'm going to go down and click on

2   Lawson portal. Continue. Now, this is one of those waits.

3   Okay. We get to the Lawson log-in screen. So we put in the

4   user name and password and then click on log in. This will be

5   one of those longer waits. You can see the time clicking away

6   in the bottom right-hand corner.

7   Stop. So now we are at the Lawson home page, and if you

8   are familiar with browsers, you see up here, there is the URL

9   that we're using. LSF server, that's Lawson server foundation,

10 that's what we talked about before. Server.corpnet.lawson.com.

11 So we're looking at the portal.

12 Q   All right, you used the term URL. Can you explain to the

13 jurors what you mean by that?

14 A   Falling back into my vernacular. Universal resource

15 locator, so commonly called a web address. Okay, so we can

16 continue. Top. Stop. That was stop, not top. Here's another

17 one of those drop-down menus. So on the left-hand side, I have

18 a menu. One of the top level choices was requisition self

19 service. So I'm going into the RSS module, and I'm picking one

20 of the activities that is there. This is one of the

21 capabilities. All right, so I'm going to click on the shopping

22 selection. Continue.

23   Stop. So, now we come to the shopping screen. Again, if

24 you look up here at the top, you will see there are some

25 choices that can be made. These are, again, top levels of what

636

1   this one so we know what you are using?

2   MR. ROBERTSON: It's going to be Plaintiff's

3   Exhibit 376 is the video, and Plaintiff's Exhibit 374 would be

4   the hard copy paper capture of the screen shots.

5   Q   So we're clear, this is like the video playback? We can

6   do the stop, forward, reverse by using these tools if we need

7   to go back at any time?

8   A   Well, these tools are for the original capture. Mike and

9   I are going to do it manually. I'm going to say stop and

10 continue and probably say go back.

11 Q   We may have to go back because it moves quickly sometimes?

12 A   Sometimes it's too quick, and sometimes it's too slow.

13 Right now we're going to start with a go back, so go back to

14 the beginning.

15   All right, so as the laptop screen exists, first I'm going

16 to bring up the browser. I'm going to use Internet Explorer,

17 so here we go. Stop. Now, again, I'm just going to tell you,

18 you're going to see some times when not much is happening, but

19 this is just a true-to-life recording of exactly what was on

20 the screen at the time.

21   Okay, so in your ordinary Internet Explorer browser, I've

22 clicked on the favorites tab, and one of the favorites that

23 I've saved is the Lawson portal.

24 Q   Is this an example of the drop-down menu you were talking

25 about earlier?

638

1   will be drop-down menus. I'm going to go click on this

2   find/shop, and that's going to give me additional choices.

3   Continue.

4   Stop. So here are the choices. I can search the

5   catalogs, I can do a Punchout. I'm going to do that later.

6   Down there at the bottom is categories. So I'm going to go

7   down and click on categories, because I want to do a category

8   search. Continue.

9   Stop. Now, remember with the UNSPSC codes, we said that

10 there were four levels: Segment, family, class, and commodity.

11 So what is showing here in the category tab, the category

12 window, is the first three of a small set of these top level

13 categories, these segment categories. So, remember, there

14 could have been a hundred of them, 00 to 99, but here, for

15 clarity, everyone exchanges those digits for names so that they

16 have -- they make sense to humans.

17   So my top choice there, live plant and animal material and

18 accessories and supplies, that's one of the segment codes.

19 Now, I don't know what code it is, 23, 99, I don't know. It

20 doesn't matter. It is representative of what is in this very

21 broad segment. So I'm going to scroll down and show you the

22 others, and then I'm going to come back and pick one in the

23 middle. Continue. See, we only had about six there. Stop.

24 Q   Let me ask you a question about that then. There are only

25 six here to illustrate the functionality of it. Does the

639

1 Lawson requisition self service you are using here have the

2 capability to have more?

3 A   Absolutely.

4 Q   How many could it have?

5 A   It could be a hundred different segments. Each of those

6 segments could have a hundred families. They could each have a

7 hundred classes. They could each have a hundred commodities.

8 Q   I noticed you clicked on one of these segments?

9 A   The one I clicked there in the middle is communications

10 and computer equipment and peripherals and components and

11 supplies. So you can see how broad a category that segment

12 name represents. So what we're going to do now is drill down

13 to become finer-grained.

14   So having clicked on that top level segment -- continue --

15 stop. So underneath the segment is the family. Now, here we

16 show that there's very little data in the system we were

17 provided. Whereas there could be a hundred different family

18 names, there's only one. So due to the paucity of data here,

19 I'm going to click the only possibility I've got.

20   All right, so I've done the segment. This is the family.

21 I'm going to click on the family name, hardware and

22 accessories. Continue.

23   Stop. So now we're down to the class. There could have

24 been a hundred classes, but, again, because there's so little

25 data here, there's only two. So as I look at the class, I have

640

1 a choice of computers or monitors and displays. So I'm going

2 to go for computers. Continue.

3   Stop. Now I'm down to the commodity level. The

4 commodities, there should be a lot of them, but because of the

5 paucity of data here, we have only one commodity category,

6 notebook computers. So I'll click the only choice I've got,

7 and then that will list the actual item data that is underneath

8 the notebook computers commodity code. Continue.

9   Stop. So now we see all of the items in the database that

10 have the UNSPSC code for notebook computers, and there's only

11 two, okay? Small database.

12 Q   So I understand, for the segments, there could have been

13 thousands, for families there have been --

14 A   Hundreds.

15 Q   Hundreds. What is the next level?

16 A   So you start with segment.

17 Q   Class?

18 A   Could be a hundred. Then family -- each of those segments

19 could have a hundred, and then each of those families could

20 have a hundred classes, and each of the classes could have a

21 hundred commodities.

22 Q   Those commodities, you could have thousands of items?

23 A   Right. Once you get down to the commodity level, you have

24 unlimited number of items that map to that code. Here we have

25 two. Okay, it's going to do the job, though.

641

1   All right, so I'm going to look at these two computers.

2 You can see the first line item there is an IBM ThinkPad, and

3 it has an item number of 6001. The one below it is a Dell

4 Inspiron 8000. It has an item number of 6020. So I'm going to

5 go click on the item number, and that's going to get us a

6 description of this item.

7 Q   Before you do that, Doctor, does it have unit measure

8 category?

9 A   Right. Under UOM, you see each.

10 Q   Does it have cost information?

11 A   Under cost, the ThinkPad is 2,500. The Dell is 2,000.

12 Q   Does it have description of the item?

13 A   It has a description, IBM ThinkPad T20 or Dell Inspiron

14 8000 with Intel Pentium processors.

15 Q   You indicated it had an item number?

16 A   There is an item number.

17 Q   And it even provides for the Intel Pentium or the Dell

18 Inspiron, the manufacturer?

19 A   I just covered up the description. Yeah. So not only do

20 we have in this case the name of the computer, Dell Inspiron

21 8000, we also have a little more descriptive information, that

22 it's an Intel Pentium III processor.

23   Okay. We'll continue. Oh, and stop. I should also note

24 while we're here that over here is the Dell shopping cart, and

25 it's obviously empty. It's supposed to be empty --

642

1 Q   I think you misspoke. I think you said the Dell shopping

2 cart.

3 A   I misspoke. This is the Lawson shopping cart right here

4 where it says my cart. And so as I select items, they will

5 show up in the shopping cart, but we'll see that. All right,

6 so now I'm READY to drill down on the ThinkPad. Continue.

7   So I click on that item number. Stop. And this retrieves

8 the data in the item master and vendor item table database and

9 tells me about the item. So we have an item number, we have a

10 description, a unit of measure, a cost.

11   We have a source vendor ID, 118, and a source vendor name,

12 Office Max. So from observing this information that is

13 produced, I know that this IBM ThinkPad has a vendor source of

14 Office Max.

15 Q   Let me stop and ask a question, Doctor. There's a box

16 there that says image not available. Does this RSS application

17 have the ability to load images of the items offered for sale?

18 A   It does, and the documentation encourages one to do so.

19 But, again, because of the paucity of data, we didn't have any

20 item images in the data we were given.

21 Q   This is how it was provided to us; it could have been

22 provided with an image, because the software permits you to do

23 that?

24 A   Right. It could have been chock-full of images, but it

25 wasn't. Okay, so I'm going to scroll down and up so you see

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1   all of the information that was presented to me as the user of
2   the RSS system, and then we'll go back and look at the other
3   Dell computer. So continue. So now I'm going to add that to
4   the cart.
5   Stop. So here in the Lawson shopping cart, I have my IBM
6   ThinkPad T20, item number 6001; quantity, one; unit of measure,
7   each; cost, $2,500. So I'm going to park this item in the
8   shopping cart, but then I'm going to go back and look at the
9   equivalent items, equivalent in that they had the same UNSPSC
10 code.
11   All right, so we'll continue, and I'll click on this back
12 button over here. So here -- stop. Here is that second line
13 item as we saw before, the Dell Inspiron. So I'm clicking on
14 its item number, and we'll drill down on that and see what
15 information is provided there. Continue.
16   Stop. So similarly to what we saw before, this is the
17 other machine. It's an item -- I wiped it out. Item 6020, a
18 Dell Inspiron 8000 with Pentium III processor, a unit of
19 measure each, and a cost of 2,000. But it has a source vendor,
20 ID code of 124, and a source vendor name of Diablo.
21   So the first computer, the ThinkPad was coming from the
22 Office Max catalog. This is coming from the Diablo catalog.
23 So I stare at that, and I think which of these machines is a
24 better choice for me. I'm cheap, so I'm going to go with this
25 one. So I will add this one to the shopping cart, Lawson

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1   shopping cart, and delete the other one. So continue.
2   Okay, now stop. So now I have both notebook computers in
3   the Lawson shopping cart, and I'm going to go up here to this X
4   and delete the ThinkPad. Continue.
5   And like all good software, it asks me, do you really want
6   to delete that, and I say, yes. Okay. Stop. So at this
7   point, I have done the UNSPSC code, found two generally
8   equivalent notebook computers, chose one, added it to the
9   shopping cart, added the other one to the shopping cart,
10 deleted the first one.
11   So I've been able to convert one item from one source, the
12 ThinkPad from Office Max, into an equivalent item from another
13 source, the Dell Inspiron here, and having done that, I'm now
14 going to go back and pick another category and find another
15 item to add so that I'll have multiple items in my shopping
16 cart.
17   Okay, so I'm backed out -- because I did that drop-down
18 menu to categories, I'm back at the highest level, the segment
19 level. So continue. Scroll down. Stop. So this time my
20 segment level is laboratory and measuring and observing and
21 testing equipment. Continue. Stop. My family, again, there's
22 only two here, laboratory and scientific equipment, or
23 measuring or observing, or testing instruments and accessories.
24 Continue.
25   So I pick at my family, laboratory and scientific

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1   equipment. Stop. Oh, I might also note that the hierarchy
2   tree is being kept for me up here at the top. Here's my
3   segment level, here's my family level. As soon as I click here
4   on my class level, it will appear here and so on.
5   All right, so I'm about to click on laboratory,
6   environmental conditioning equipment for my third category.
7   Continue.
8   Stop. Okay, now, again, we're down to commodities. There
9   could be a hundred of these, but there's not. There's just
10 one. There's one commodity called glove boxes. So when I
11 click on this, I will see all the items in the item master
12 database and the vendor item table that have been encoded with
13 the UNSPSC code for glove boxes. Continue.
14   Stop. Once again, the database is small, so there's only
15 two entries under the commodity heading. Both of these are
16 boxes of sterile surgical gloves, so I'm going to pick one and
17 add that to my Lawson shopping cart. Continue. I'm going to
18 look at it first. Smart shopper.
19   Stop. All right. So I just did a drill-down as I did
20 with the computers. So you see we have an item number, 1036,
21 we have a description, gloves, sterile surgical, size seven. A
22 unit of measure. Here it's case, cost, 400 bucks, source
23 vendor. The ID number is 117, and the source vendor name is
24 Baxter Healthcare.
25   Continue. So scroll down and back up, and add that to my

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1   shopping cart. So here it is, gloves at the top, Dell computer
2   at the bottom. Now stop. I have finished shopping, so I have
3   the information from the database now in the shopping cart. My
4   next goal is to create a requisition. Then I'll need to get
5   that approved, and then I'll need to get that turned into
6   purchase orders.
7   So since the gloves and the Dell came from different
8   vendors, I will need two POs, one to each of those vendors, so
9   I'm going to click on checkout. Continue. All right, saved.
10   Stop. So it gives it a number, 911. So when I come into
11 this system next, I'm going to come in as a manager, and I'm
12 going to look for this order 911 that is existing in the
13 system. I'm going to find it among all other orders, and then
14 I'm going to get it approved. All right, continue. Status
15 needs approval.
16   All right, back to the portal home page, and now I'm going
17 to come in as a manager. Here are some requisitions, but 911
18 is not among them. Stop. Here is the requisition 911, and
19 that's the one I need to have approved. Continue.
20   Stop. So here we pull up the requisition, you see right
21 there, and we have the two line items, the Dell Inspiron and
22 the case of gloves. So I've logged in now as the manager when
23 I clicked on manager, and so here are the actions I can take:
24 Approve, reject, or unrelease, so I'm going to approve these.
25 Continue.

647

1   Okay, approve, approve action to be taken. Okay. Work
2   object. Taken, all right. Stop. So at this point, it looks
3   like -- superficially it looks like I'm done. It looks like
4   I've got it approved, but in this particular example, there
5   were additional business logic rules that said, aha, you have a
6   computer in there. That's a technical thing, so you need
7   technical approval in addition to manager's approval. Okay,
8   we'll go get that, too, so back I go as a manager. Continue.
9   Approve technical items, find 911. There it is. Stop.
10   And so now what I'm going to be approving is the fact that it's
11   got a computer in there. Continue.
12   Stop. While we're here, we may as well show, to show that
13   I'm doing the technical approval, we have this item detailed
14   down here that says it's the Dell computer from Diablo that I'm
15   approving. So I go back up to approve it.
16   Q   Let me stop you for a second, Doctor, and ask you, we've
17   been seeing a number -- some of the features that we're going
18   to be talking about in the claims that were necessary about the
19   product catalog and selecting product catalogs and doing
20   comparison shopping using UNSPSC codes.
21   MR. McDONALD: I object to the form, Your Honor.
22   That wasn't a question.
23   Q   Let me ask this question: This approval process, is this
24   part of the claimed elements that are being asserted here?
25   A   No.

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1   Q   Because there's an approval process which is an additional
2   step or additional feature that's there beyond the claim
3   elements, does that render a system non-infringing?
4   A   No.
5   Q   Having this approval process is irrelevant to the analysis
6   when the jury needs to go back and determine whether or not the
7   functionality either satisfies a system or method?
8   A   That's correct.
9   Q   Thank you.
10   A   Okay, so we're ready now to do the technical approval.
11   Continue. So I'll click approval, approval action taken. Work
12   object dispatched. Stop. Now, you heard me say earlier that
13   in the purchase order module, there's a program called PO 100
14   that turns requisitions into purchase orders. So I'm going to
15   run that program, PO 100, and I'm going to tell it which
16   requisition to go get. You might -- you may or may not recall
17   that I said that information gets cached in the system and
18   retrieved.
19   This is retrieving the requisition data by the purchase
20   order module, and then we'll see it generate POs. Okay, so now
21   we're ready to run the PO 100 program. Continue.
22   Stop. So here is the opening screen for the PO 100
23   program. So I'm going to fill in job name and job description,
24   I'm going to put in three pieces of information that the system
25   requires. Here this has -- this part has nothing to do with

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1   infringing. This is just how you make the system work, and
2   then we'll see it -- turn the requisition or choose the
3   requisition and then we'll see it.
4   We've chosen the requisition, or have we? No, we're about
5   to because I'm going to give it a name, and then we'll see it
6   generate POs.
7   So I'll call this job RQ911, give it a name, requisition
8   number 911. Default delivery is five days. Release the
9   purchase orders, yes. Choose an option for exception reports.
10   There are some other boxes that are available. I don't need
11   any of these. I'll go back to the main tab, and, okay, that's
12   all I need to do, so I add this. And now I'm ready to submit
13   it to the system for -- by submit, I mean turn the requisition
14   into a PO. So I click on submit, give this a submit -- all
15   right, and stop.
16   Now, this process is actually running what we call in the
17   background. The foreground is this PO 100 screen, and the
18   program is running in the background converting the requisition
19   to a purchase order, so when this was done in realtime, enough
20   time had elapsed for that process to occur and for a report to
21   be generated which is the purchase order.
22   So what I'm going to do next is just go look at it,
23   because it's been created. I just can't see it yet, so
24   continue. I'm going to go up here to the print manager and
25   click on that. Stop.

650

1   So here this print manager keeps copies of the things it
2   creates, and the very top one on the list is that job that I
3   just named requisition number 911, and it was operated on by
4   the PO 100 program. So when I go click on this, I'm going to
5   reveal the purchase orders that have been created. Continue.
6   Stop. So if you think of this screen and then the
7   scroll-down menu as a big piece of paper, up here at the top we
8   have some information like when it was run, and then here we
9   have information that's important to a purchase order, namely
10   who is doing the purchasing.
11   So in this case, the buyer is the Metropolis Medical
12   Center, and it's their -- somewhere in here it will say the
13   delivery location is main. Well, I don't see that yet. It
14   doesn't matter. What we're going to do now is scroll down a
15   bit more. Okay, continue.
16   Move from side to side, there's nothing to the right.
17   Stop. So here is the first purchase order. Our buyer,
18   Metropolis Medical Center, we have a vendor, 117. Baxter
19   Healthcare is that vendor. We have an item number 1036. We
20   have a description, sterile surgical gloves, size seven. Its
21   source document was requisition 911. Quantity is one. Unit of
22   measure is a case, and here's what I was looking for. The
23   requesting location is main. And then here, the PO has been
24   released. So this system has created the purchase order and
25   released it.

651

1   Now, that's the first of two. So now I'm going to scroll

2   down some more. Continue. Stop. And here's the second PO.

3   So it's at the bottom of this conceptual sheet of paper. So,

4   again, we have the buyer, Metropolis. We have a vendor, number

5   124 from Diablo. The item number is 6020. The item

6   description is the Dell Inspiron 8000. It came from the 911

7   requisition. I'm ordering one of them in unit of measure each,

8   and I'm delivering it to main.

9   Now, here, for the second PO, it has been released. So

10   two POs have been created and released, and the report

11   summarizes two POs created. That's the end.

12   Q   Thank you. Now, Doctor we're going to be going through

13   some more documents, and we have three more demonstrations to

14   sort of illustrate the functionality of this accused system.

15   And at some point, I'm going to be asking you to go through all

16   12 of these asserted claims for each element under the Court's

17   claim construction. Are you going to be able to do that for

18   me?

19   A   Sure.

20   Q   At this point, just keeping the Court's claim terms in

21   mind, let me just ask you, at a high level with respect to this

22   demonstration we just saw, and keeping the claim three and

23   claim 28 we talked about which include that element for

24   converting, did we see at least two product catalogs?

25   A   Yes, we did.

652

1   Q   Did we see the ability to select those product catalogs to

2   search?

3   A   We did that through the categories.

4   Q   Tell me what two product catalogs we saw?

5   A   Office Max and Baxter Healthcare.

6   Q   Did we also see Dell and Diablo?

7   A   Yeah, that's right, we did.

8   Q   And was there an ability to select the product catalogs?

9   A   Yes, we did it through the categories.

10   Q   Was there an ability to search for matching items in those

11   product catalogs?

12   A   We did that.

13   Q   How did we do that?

14   A   We put in the -- we did the category search by marching

15   through the UNSPSC codes, picking a commodity and then picking

16   items.

17   Q   Once you had selected those items from the office, from

18   the shopping cart, were you able to put them into a

19   requisition?

20   A   Yes.

21   Q   And did you -- were you able, from that requisition, after

22   you got the appropriate approvals which are not part of the

23   claims of the -- elements of claim, excuse me, were you able to

24   generate one or more purchase orders from that requisition?

25   A   Yes, we did.

653

1   Q   And were you able, using the UNSPSC, to find items that

2   were similar, generally equivalent?

3   A   Yes, I converted that ThinkPad into a Dell.

4   Q   Thank you. Doctor, I'd like you to take a look at

5   Plaintiff's Exhibit 280, and can you identify what this

6   document is?

7   A   This is the Lawson Software response to Presbyterian

8   Healthcare Services.

9   Q   So this is another one of those responses to an RFP?

10   A   That's correct.

11   Q   And what is it dated?

12   A   March 22nd, 2005.

13   Q   And if you could take a look at the page that begins with

14   barcode 196, if you would, sir. And here -- which has a Bates

15   number that ends 848.

16   A   Yes, I'm there.

17   Q   And here Presbyterian Hospital, in this -- here Lawson, in

18   this response to the request for proposal from the Presbyterian

19   Healthcare Services, is ask asking about requisitioning

20   capability from Lawson; is that right?

21   A   Yes. That's exactly what it says.

22   Q   And it says in the requisitioning capability, it's asking

23   to describe your ordering tools for various types of items,

24   stock, nonstock, and non-catalogs; do you see that?

25   A   Mike, it is below there. There it is.

654

1   Q   Okay. And the response, is that on the next page?

2   A   That's on the next page.

3   Q   Let me -- okay, let's go to the next page. And in

4   response to this RFP, this Lawson requisition, is that one of

5   the modules that you've been describing today?

6   A   It is.

7   Q   What does it say that the capability is of Lawson

8   requisitions that Lawson is representing to the Presbyterian

9   Healthcare Services?

10   A   That first paragraph says, Lawson requisitions enables

11   users to view online catalogs for stock and nonstock items,

12   select items from the catalog or a template, and add additional

13   comments to their requisitions.

14   Also, requesters can add non-catalog items such as service

15   or specials through item free form input. Additionally,

16   requester can view all previously created requisitions and

17   status with requisition inquiry.

18   So this tells us that the users can view online catalogs,

19   they can select items, and they can prepare requisitions.

20   Q   And this is using that requisitions module that you

21   described; is that right?

22   A   It is.

23   Q   Let me ask you, there's an additional question on this

24   page where Presbyterian Healthcare Services asks Lawson to

25   quote, describe your system's ability to establish global

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1   requisition templates and its ability to support role-based

2   modification of requisition templates. Can you tell us how

3   Lawson responded to that question?

4   A   Right. Underneath that is the answer. Users have the

5   ability to select items from the item catalog, external vendor

6   catalogs called Punchout, or from predefined shopping lists.

7   So this is telling us that we have the ability to select

8   items from the internal catalog, item master and vendor item

9   table, or from external catalogs, and that external vendor

10 catalogs are available through the Punchout mechanism.

11 Q   So earlier this morning, the Court had asked the question

12 concerning whether there were two different types of catalogs

13 that might be -- that might satisfy the claim language as the

14 Court has interpreted it. Is this an illustration of two types

15 of catalogs available from the Lawson system?

16 A   Absolutely. It's selecting from the item catalog, that's

17 the internal one, and then the external ones are the Punchout

18 catalogs.

19 Q   If we could go to page 194 of this document which has the

20 Bates label 846. There's a question by this requester, how can

21 an end user utilize your solution to order an item from CS for

22 direct delivery to floor. Do you see that?

23 A   I do.

24 Q   What do you understand CS to mean?

25 A   I forget.

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1   Q   Okay. What is Lawson's response?

2   A   Lawson requisition self service enables users to order any

3   type of item, stock, nonstock, special, or service, from a

4   single user interface. Lawson enables users to perform

5   searches within the catalog or utilize UNSPSC categories for

6   selection.

7   This next phrase says, Lawson eProcurement -- that

8   eProcurement is the prior name of the Punchout product. Lawson

9   e-Procurement also supports Punchout technology that enables

10 users to access external supplier catalogs and bring selected

11 items back to the Lawson requisition for processing.

12 Q   When you said Lawson eProcurement was the prior name for

13 Lawson Punchout, did you see documentation in the review of

14 materials you were provided that indicated that?

15 A   Yes, I did.

16 Q   Now, this is talking about Lawson requisition self server;

17 correct?

18 A   Yes.

19 Q   And that was the software that we saw in the first

20 demonstration you did; correct?

21 A   Correct.

22 Q   And that Lawson is representing here it can perform

23 searches within the catalog or utilize the UNSPSC categories

24 for selection; is that right?

25 A   Yes.

657

1   Q   And did you demonstrate that capability in your video?

2   A   Yes, I did.

3   Q   Going back to page 197 for a moment with respect to this

4   representation about viewing online catalogs and select items

5   from that catalog, why is that relevant to any determination

6   the jury may have to make with respect to the asserted claims

7   here?

8   A   Would you repeat the question.

9   Q   Sure. We talked about Lawson requisitions here, and it

10 was enabling the users to view online catalogs for stock and

11 nonstock items and select items from that catalog. Why is that

12 important?

13 A   Well, the ability to view catalogs, to select catalogs and

14 to view items and to view these external catalogs, those relate

15 to the claim, to the elements of the claims that we're

16 discussing.

17 Q   Going back -- sorry for switching back and forth, but

18 going back to page 194, there was a description here about this

19 Punchout capability. Do you have a video that you are going to

20 be showing the jury demonstrating the Punchout capability?

21 A   Yes, I'm going to do that.

22 Q   There was a document that we were referring to earlier

23 with respect to Punchout that had a diagram with kind of logic

24 flow or process flow on that document.

25 A   I remember that.

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1   Q   I'm just identifying that document, and we'll go back and

2   address what was illustrated there with respect to Punchout if

3   we could for a moment.

4   MR. ROBERTSON: If I might have a brief indulgence,

5   Your Honor, to find that document. Can we see Exhibit 211.

6   Q   It is 211, and it's the barcode 12 of the document ending

7   in a Bates label 790, and we just confirmed, just go back to

8   the first page, Mike, that it's the Lawson procurement Punchout

9   installation guide. Do you see that?

10 A   I do.

11 Q   Now back to page 12, top of the document, it says, Lawson

12 procurement Punchout network architecture example. Do you see

13 that?

14 A   I sure do.

15 Q   I'm going to ask you if you can try and walk us through

16 this, because it's fairly complicated, and, unfortunately, it's

17 a little bit difficult to read.

18 A   What I'll ask Mike to do is to blow up parts of it. This

19 is a series of eight steps, and I want you to be able to see

20 what the document says about each of the eight as I explain

21 what it means.

22   So to set the context here, a user is using the Lawson

23 system, and if you remember that find/shop drop-down menu, one

24 of the things on there was Punchout, and I said we would get to

25 that. Well, we've gotten to that.

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1 So this document is explaining technically what's going to

2 go on when we do the Punchout, when we go on the external

3 vendor catalog. When we do the memo, of course, you'll see the

4 interactions, but this is explaining the information flow, and

5 that turns out to be important for the claims that we're

6 talking about.

7 Okay, so it begins, as you are going to see, the user

8 clicks on a Punchout vendor icon in RSS. So the user is

9 sitting at the requisition self service and will have a series

10 of icons like Staples or Office Max or Dell, and the user is

11 going to click on one of those, and that's going to initiate

12 this Punchout session.

13 So now we'll go to step two. RSS sends, and this is --

14 what you see here, Punchoutsetuprequest, all one word. So that

15 is a computer function that's being called.

16 Q   When you say RSS --

17 A   Requisition self service. So it makes this function call

18 and sends a Punchoutsetuprequest to the vendor for

19 authorization. So this is an outbound communication from

20 Lawson -- so let's, for convenience, let's just name an

21 external vendor. Let's say Dell.

22 So it's going to send a message to the external vendor,

23 Dell, and it's going to have information in there that nobody

24 but Lawson and Dell would know, and that's how it's going to

25 authenticate, or authorize in this case, and you can see this

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1 is for security. You don't want just anybody highjacking your

2 session.

3 This information goes to the external vendor site. This

4 is a website. And when that message arrives, it's going to

5 invoke a remote Punchout servlet, s-e-r-v-l-e-t. A servlet

6 is -- computer science doesn't have many jokes, but this is one

7 of them. It's a baby server, a servlet, and so the servlet is

8 a piece of code that is watching for incoming information.

9 So when this Punchoutsetuprequest arrives, the Punchout

10 servlet grabs it, decodes it, and operates on it. What does it

11 do?

12 Q   Can I ask you who provides this Punchout servlet?

13 A   All of this comes from Lawson. So now we're moving to

14 step three. The vendor responds with a Punchoutsetupresponse

15 sent back to Lawson requisition self service. So this is the

16 symmetric communication that comes back. What went out was the

17 Punchoutsetuprequest. What's coming back is the

18 Punchoutsetupresponse. So now the two entities, Lawson and the

19 external vendor, have authenticated each other.

20 THE COURT: What are -- I'm using the system, and I'm

21 calling Dell on the computer.

22 THE WITNESS: Yes, sir.

23 THE COURT: What am I asking Dell; send me a catalog

24 or buy me a beer or what?

25 THE WITNESS: No, sir. The Lawson computer and the

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1 Dell computer are merely identifying each other. The user has

2 not really done anything but one mouse click on let's say the

3 Dell icon.

4 In our computer parlance, the two computers are

5 setting up a communication path. That's all that's happened.

6 Q   At this stage?

7 A   So far. All right, step four, so, we mentioned the

8 universal resource locator, the URL. That's the web address of

9 a computer. This is why this technical detail is important.

10 When the Lawson system contacts the external servlet, part of

11 the code design is that the servlet sends back to Lawson the

12 address, the URL, and embeds it in the Punchoutsetupresponse,

13 and that is how Lawson knows where to redirect the user so that

14 the user finds the specific customized catalog that that vendor

15 has created by agreement with the user.

16 So the web address is provided by, in this case Dell, so

17 it's not www.dell.com. It's something special, and we're going

18 to see that. So that URL comes back in this

19 Punchoutsetupresponse, and then the Lawson system is going to

20 redirect to there. And we're going to see that happen.

21 THE COURT: When you say Lawson is doing it, do you

22 mean Lawson system?

23 THE WITNESS: I do, sir.

24 THE COURT: So if I'm using the Lawson system where

25 you just said Lawson does it, it's the Lawson system that's

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1 doing it when I punch that one button that you told me you

2 punched a minute ago.

3 THE WITNESS: Yes, sir, that is exactly right.

4 THE COURT: But it doesn't have to be somebody

5 sitting in Lawson's office, or it can be me or --

6 THE WITNESS: No, sir. It's not you or me. After

7 that first click, everything I've talked about is just

8 computers talking to each other, and this whole experience

9 takes microseconds. Milliseconds. It's really fast. (Making

10 noise) and that information is exchanged.

11 Step five, new shopping window opens. Okay, now

12 that's easy to understand. So a window is going to open, and

13 it's connected to this special external vendor site. We're

14 saying Dell. And so now you start shopping. That's you, the

15 user. You're doing shopping at the special Dell website. You

16 pick some items, you put them in the Dell shopping cart, you

17 click checkout. That part is easy to understand.

18 THE COURT: Well, now you say I'm connected to the

19 vendor site. Am I just looking in the vendor's catalog at this

20 point in time, or am I doing something else?

21 THE WITNESS: You are looking at a special catalog,

22 one that was designed by Dell for whoever you, the customer,

23 are, and you are shopping within that catalog. So now you

24 check out.

25 Q   Let me ask you then, Doctor, you, the user, are using the

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1 Lawson requisition self service?
2 A   I realize that can be ambiguous. So I, the human user,
3 using the Lawson system, have connected to the external special
4 Dell site. I have shopped. I have put some items in the Dell
5 shopping cart. I have clicked on the Dell checkout.
6 Q   I want to stop you there because this is a little
7 confusing when you say special Dell website. This is not the
8 Dell website that I can just open a browser and go to and shop
9 from my home computer. What is this special Dell website you
10 are referring to here?
11 A   It is a website that Dell has created for this customer,
12 and its address is that URL I showed you in step four.
13 Q   But let me ask you, to get to this special website you've
14 been talking about, what software are we using to do that?
15 A   This is the Lawson software. It's redirecting me to this
16 special site.
17 Q   When you do this demonstration that is going to illustrate
18 this Punchout capability of this requisition self service, are
19 we going to be able to see that we're not just at the
20 commercially available Internet Explorer website of Dell but
21 we're at some sort of specialized website that has been set up,
22 directed, and controlled in some way by Lawson?
23 A   That's right. That's why I wanted -- that's why this
24 technical detail is necessary, so that we can see and observe
25 and interpret that in the demonstration.

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1 Q   I didn't mean to interrupt. I'm sorry.
2 A   That's fine. So we check out, me, the human user. I
3 check out. Step six, vendor, so that's Dell, sends the
4 shopping cart content in a special message, this Punchout order
5 request. So we had a Punchoutsetuprequest and a setup
6 response. Now we have an order request.
7   So Dell is sending the content of the shopping cart back
8 to Lawson in this message, the Punchout order request.
9 Symmetrically to the servlet running over on the Dell side is a
10 servlet running on the Lawson side. So that servlet picks up
11 this document, this Punchout order request from where it's
12 temporarily cached, just temporarily stored.
13 Q   Before we move on, Doctor, can you tell us who specifies
14 the format for the data that's come back to Lawson?
15 A   Lawson controls all of this, and we have documents that
16 show what those formats are.
17 Q   Sorry to interrupt.
18 A   So the order comes back into the Lawson system. The
19 shopping session ends, and your special window closes. Now you
20 will be visibly back in the Lawson system. We've never really
21 left it, but you'll be back from the Dell side to the Lawson
22 side.
23   Step seven. So the shopping session ended. So detecting
24 that, RSS submits a request to the Punchout servlet to retrieve
25 the cached shopping cart content. So that's go get that order

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1 request document and pull it into the Lawson system.
2 Q   Where did that directive come from?
3 A   All of this, all of this code, all of these directions,
4 all of these formats are provided by Lawson. They are in the
5 documents. The code is given to the external vendors and a
6 partnership is created. So all of this stuff that is quite
7 technical just appears miraculously to work.
8 Q   Have you seen documentation where Lawson actually calls
9 these vendors Punchout partners?
10 A   Yes.
11 Q   Will we see some of that?
12 A   Yes, I hope so.
13 Q   Thank you.
14 A   So this is the next-to-the-last step. So we go on to step
15 eight. Requisition self service creates a Lawson requisition
16 from this retrieved content. So the shopping cart was returned
17 in the order request document. That was cached or saved. Now
18 it's been retrieved, and Lawson requisition creates -- the
19 requisition software module creates a requisition for whatever
20 it was I bought, ordered at Dell.
21   Okay, so that's the technical side of what we're going to
22 see in the demonstration.
23 Q   Thank you for that. I brought that all up in the context
24 of Plaintiff's Exhibit Number 280 that was offering that
25 Punchout capability that was the response to the Presbyterian

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1 Health Services request for proposal. I'd like to go back to
2 that if I could for a second, Doctor. It's volume six.
3   Specifically, could you go to the page when you get it,
4 Bates label -- barcode 201 that ends with a Bates label 853.
5 You recall we were talking about the requisition capability
6 that was being offered to Presbyterian Healthcare Services?
7 A   Yes.
8 Q   Here is a question they ask in this RFP. Describe your
9 system's ability to search for common items via a synonym
10 search, partial name, or other criteria; do you see that?
11 A   Yes.
12 Q   How did Lawson respond?
13 A   Lawson enables users to easily search for items by almost
14 any item field within the system. Common search fields include
15 item number, item description, secondary item description, item
16 class, purchasing class, vendor item, manufacturer item,
17 generic name, universal product code, national drug code, shop
18 keeping unit, health industry business commodity code,
19 universal commodity code, et cetera. Additionally, users can
20 utilize synonyms for keyword searches.
21 Q   So what is Lawson telling Presbyterian Hospital about the
22 capability of its requisitioning module?
23 A   That their users will be able to search the catalogs in
24 their database using many different search criteria including
25 the ones I just named.

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1   Q   Why is that of relevance to any determination the jury

2   needs to make with respect to infringement here?

3   A   Because the user will be able to search these catalogs to

4   find matching items.

5   Q   By using any one of the these --

6   A   By using any of these attributes that have been listed

7   here.

8   Q   Turn to the page in Exhibit 280 which is barcode 73 which

9   ends in the Bates label 725, sir, please. And the question

10   being asked here by Presbyterian Healthcare Services is, show

11   us an automated routing of requisition for stock picking,

12   purchase order creation, or EDI purchase order, (ANSI, X12 850)

13   to predefined vendor. Do you see that?

14   A   I do.

15   Q   Do you know what ANSI stands for?

16   A   American National Standards Institute.

17   Q   Standardized --

18   A   It's an institute that manages standards in America.

19   Q   Are you familiar with this particular standard?

20   A   Well, there's all kinds of them, but the X12 set of

21   standards is the electronic data interchange set.

22   Q   So what does Lawson represent here as far as the

23   capabilities of it, its ability to perform this functionality?

24   A   The answer is on the next page. So under the heading

25   nonstock items --

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1   Q   Refresh us again what nonstock items are.

2   A   These are items that are not owned and stocked by the

3   using entities but instead are being purchased from external

4   vendors. When requisition lines that require the generation of

5   a purchase order are created and approved, the system routes

6   these lines to a holding area to await processing by the

7   purchase order module. The cost must be included in order for

8   a requisition line to be created.

9   Moving down on the page --

10   Q   Let me stop you there. When you talk about nonstock

11   items, you mentioned from external vendors. Could these

12   external vendors be both the Punchout vendors that you

13   described and the internal catalogs that are composed from the

14   item master list and the vendor table?

15   A   Yes.

16   Q   Thank you. Where are you now?

17   A   So in order for a PO to be created automatically, a vendor

18   must also be included on the requisition line. And then,

19   skipping down to the start of the next paragraph, if the

20   necessary information is present in the requisition line, a

21   scheduled job will pull the items from the holding area and put

22   the item on a purchase order for the vendor.

23   So this confirms that we need a vendor name, and we need a

24   cost in the requisition in order for that to become a purchase

25   order, and that is information that comes from the vendor.

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1   Q   If I could direct you to page 182 barcode, Bates labeled

2   834, another question is being asked in this RFP. Here it

3   says, define capabilities for uploading foreign data such as

4   price files that are not available as an 832, describe

5   exporting capabilities. What is Lawson's response?

6   A   In addition to supporting 832 catalog imports, Lawson also

7   enables item information to be imported via Excel uploads or

8   utilizing the vendor pricing import functionality. The vendor

9   pricing import program supports the uploading of vendor

10   agreements, and at the top of the next page, and creating or

11   updating item master information.

12   Q   Do you know what this 832 catalog import is?

13   A   Yes. So electronic data interchange has lots of

14   predefined standards for how documents are to be exchanged and

15   what their formats are. So the 832 is the format for an

16   electronic vendor catalog.

17   Q   You mentioned the uploading of vendor agreements before.

18   The vendor agreements, what did you indicate with respect to

19   them as to whether they could have catalog data?

20   A   Those are the vendor price agreements, so they provide the

21   cost information.

22   Q   Turn to page 190 of this exhibit. There's a question

23   being asked in this requisitions module, what electronic

24   transaction sets can be handled. Do you see that?

25   A   Yes.

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1   Q   What is Lawson's response?

2   A   Lawson procurement supports electronic data interchange

3   with numerous vendors and suppliers. Transactions that are

4   currently supported include 850 purchase order, 855 purchase

5   order acknowledgment, 856 advance ship notification, 810

6   invoice, and 832 item catalog. Additionally, Lawson provides

7   interface files within each module to further the exchange of

8   information as needed.

9   Q   So what, if any, relevance does that have to the issues

10   the jury needs to determine?

11   A   This says that Lawson supports these standardized EDI

12   transactions, so they can send purchase orders to vendors, they

13   can receive the purchase order acknowledgment that tells

14   whether or not the order was accepted, whether it had errors,

15   whether items that were in there were backordered or not

16   available in stock, and using that 832 transaction, that Lawson

17   can import a vendor catalog using the EDI functionality.

18   MR. ROBERTSON: I'm moving on to another document,

19   Your Honor. I don't know when it was you wanted to take your

20   afternoon break, but I'm happy to move forward.

21   THE COURT: Well, we probably need go ahead and

22   change court reporters.

23   THE COURT REPORTER: I can go a little bit longer.

24   THE COURT: Go ahead, and we'll see. We'll take a

25   break in maybe 15 minutes.

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1 Q   I'd like you to look at Plaintiff's Exhibit Number 170

2 which, I believe, is in binder four. Again, this is another

3 response to a request for proposal from, in this case CML

4 Healthcare?

5 A   That's right.

6 Q   What is the date of this response?

7 A   April 30th, 2009.

8 Q   I forget if I ask this but it's a Lawson response; is that

9 right?

10 A   Yes, it is.

11 Q   Why don't we take a look at page five of this document

12 which is -- ends with the barcode 852, and this is a section

13 entitled 1.0 executive summary; is that right?

14 A   No, I don't think my page five is the same as yours. Do

15 you have a Bates number?

16 Q   852. Do you have Plaintiff's Exhibit 170?

17 A   It was in the other direction.

18 Q   Are we on the same page?

19 A   We're finally on the same page.

20 Q   Executive summary, do you see that?

21 A   Yes.

22 Q   There's a discussion as to the Lawson solution overview?

23 A   Yes.

24 Q   And there are a number of applications that they are going

25 to be addressing; is that right?

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1 Q   And, again, we have these headings that are A, B, C, and

2 D. Do you see that?

3 A   I do.

4 Q   Is there a description of what A entails?

5 A   We saw it earlier this morning. That A means that the

6 capability is installed and currently available.

7 Q   Does CML Healthcare ask Lawson to provide any explanation

8 for responses under B, C, or D?

9 A   Right. If the response is not going to be A, then CML is

10 asking for an explanation of why the response is B, C, or D.

11 Q   This is a number of questions here that go on for a number

12 of pages; is that right?

13 A   Oh, yes.

14 Q   With respect to the capability of this column entitled

15 item master file, there's a requirement number 12. Do you see

16 that?

17 A   Yes.

18 Q   What's the description that this requester in this case --

19 sorry, it's CML Healthcare. What question are they asking if

20 the system has the capability were they asking Lawson to

21 represent?

22 A   So CML is asking, does the system have the ability for

23 expanded item search by vendor, catalog number, partial

24 description, manufacturer code, classification code, vendor

25 name, manufacturer name, and the response is A.

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1 A   That's right.

2 Q   And some of these don't have relevance to this case -- is

3 that right, Dr. Weaver -- like, for example, general ledger and

4 accounts payable and accounts receivable, et cetera?

5 A   Right. That's not what we're concerned about.

6 Q   And you do recall this morning we were discussing that

7 this Lawson system foundation can support a number of Lawson

8 business solution modules; is that right?

9 A   Correct.

10 Q   Which modules should we focus on here in this response to

11 proposal which is Plaintiff's Exhibit Number 170?

12 A   There are six here that are of interest to us: The

13 inventory control, purchase order, the requisition system, EDI,

14 requisition self service, and procurement Punchout.

15 Q   This is a proposal to offer all of those modules that you

16 were referring to before that would provide functionality right

17 up to the Punchout level; is that right?

18 A   That's right.

19 Q   So this was an offer by Lawson to provide them with this

20 functionality; is that right?

21 A   Correct.

22 Q   Now, why don't we look at the page that has the barcode

23 36, if you will, which has the Bates label of 883. This is a

24 section entitled master file management. Do you see that?

25 A   Yes, I do, section five.

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1 Q   Does that indicate that they have that capability?

2 A   That that capability is available and already installed.

3 Q   How did Lawson respond to question number 13, does the

4 system perform automatic and/or manual number assignment?

5 A   The same, A.

6   THE COURT: What is that over there on the right?

7 "Or only," what does that mean?

8   THE WITNESS: I don't know.

9   THE COURT: Is that what it says, "or only," or am I

10 reading it wrong?

11   MR. ROBERTSON: That's what it appears to say, Your

12 Honor.

13 Q   Let me take you to page 46 of this response. I'm sorry.

14 I probably directed you to the wrong question. This

15 requirement number 13, under purchasing, do you see that? It

16 ends with the Bates label 893?

17 A   Okay. 13, question 13. Requirement 13, actually.

18 Q   Let me read it for you. Does your system provide

19 automatic electronic notification to requisitioners when there

20 is a backorder or invalid/discontinued items. And what does

21 Lawson represent there?

22 A   So the response is A so that that capability is available,

23 and then there's a note just explaining how that functionality

24 is evidenced, and it says, via Lawson's process flow, which we

25 saw the block this morning, or Lawson business intelligence,

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1 LBI.

2 MR. ROBERTSON: That's all I have for that document.

3 Thank you, Doctor. I'd like --

4 THE COURT: Why don't we go ahead and take our

5 afternoon break then. All right, ladies and gentlemen, just

6 take your pad with you.

7

8 (Jury out.)

9

10 THE COURT: How much longer with this witness do you

11 think you have, Mr. Robertson?

12 MR. ROBERTSON: Your Honor, I'm more than halfway

13 through my outline, but I still have --

14 THE COURT: I hope so. What does that mean? We've

15 been here almost a day with him. I think he started about four

16 o'clock, quarter of 4:00 yesterday. That's the longest expert

17 witness I've ever had. You're going to have to figure out a

18 way to go ahead and do something else.

19 MR. ROBERTSON: During the break, let me see what I

20 can do, Your Honor, but, of course, we want to make sure we

21 satisfy all the elements that we need to.

22 THE COURT: I agree that you do, but there's an awful

23 lot of repetition in what I've heard so far. You are picking

24 out different -- saying the same thing in some of these

25 purchase orders. Take it to a demonstration and let him

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1 demonstrate. I don't understand why we're doing what we're

2 doing right now.

3 MR. ROBERTSON: Let me see what I can do to try to

4 cut this back a bit, Your Honor.

5 THE COURT: Okay.

6 MR. ROBERTSON: But let me be candid. I don't think

7 I'm going to be able to finish today, and I think -- I might be

8 able to finish by the close of today. I'm going to shoot for

9 finishing by close today, but that's where I am. The

10 demonstrations we're going to see, again, we're going to move a

11 little bit faster on.

12 THE COURT: All right. I haven't put on you a clock,

13 but my concern is that -- I think the jury has been paying

14 attention, but you can get to a point with the detail that you

15 lose them, and it's at that point that nobody's interest is

16 served, and that's all I'm interested in. I'm going to be here

17 one way or the other. All right.

18

19 (Recess taken.)

20

21

22

23

24

25

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1 THE COURT: All right, Mr. Robertson.

2 MR. ROBERTSON: Thank you, Your Honor.

3 BY MR. ROBERTSON:

4 Q Dr. Weaver, if you would go to Volume 1 of the

5 exhibits, and specifically Plaintiff's Exhibit 105,

6 please. This document is entitled "Lawson Procurement

7 Punchout Trading Partner List." Do you see that?

8 A I do.

9 Q It says version 8X and 9.0, and it's dated

10 February 2009. Are you with me on that?

11 A Yes, sir.

12 Q What is this document?

13 A This is a list of the external vendors that Lawson

14 has set up partnerships with to make these people

15 Punchout partners.

16 Q There's a paragraph that beings "As specified

17 below," do you see that?

18 A On this?

19 Q On this first page, 105.

20 THE COURT: It's not on the first page.

21 BY MR. ROBERTSON:

22 Q I'm sorry. I apologize. On page 3 of the

23 document.

24 A Sure.

25 Q I was on the page. What does it indicate that?

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1 A As specified below, Lawson delivers generic Rick

2 Punchout transaction sets and Commercial Extended

3 Markup Language purchase order formats for the listed

4 trading partner.

5 Q What does that mean with respect to this

6 procurement Punchout capability?

7 A It means that what they call transaction sets, the

8 exchange of information, this has already been

9 implemented and it's available. So when I, as a

10 customer, want to do business with a Punchout trading

11 partner that's already established by Lawson, it's

12 quick.

13 Q What do the next few pages indicate?

14 A These are lists of the names of the trading

15 partners.

16 Q In that same book, can you go to Exhibit 104,

17 Plaintiff's Exhibit 104. This document is entitled,

18 Punchout Partner Program?

19 A Right.

20 Q Have you reviewed this document?

21 A Yes, I have.

22 Q Were you aware that this document was discussed at

23 some depositions?

24 A Yes.

25 Q Did you review that testimony?

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1   A Yes, I did.

2   Q Going to page 2 of the document, what does the

3   program overview provide?

4   A The program overview says, "Provide a formal

5   program for requesting, reviewing and adding new

6   Punchout or EDI trading partners."

7   Q Turn to page 5 of that exhibit. What's described

8   there?

9   A This is talking about the initial setup fees that

10 would be required to become a Punchout trading

11 partner. So in the first line, "Partners will be

12 expected to pay for initial setup." And the next to

13 the last paragraph, "Lawson Development will perform

14 the work required to enable the trading partner and

15 that trading partner will be added to our list of

16 supported partners."

17 Q What does Lawson tell its potential Punchout

18 trading partners its proposed benefits are on page 6

19 of this document?

20 A "Listing on our site as a procurement Punchout

21 partner. Listing in our documentation as a supported

22 Procurement Punchout Trading Partner. Invitation to

23 attend CUE," which are customer meetings. "Ability to

24 use Lawson Partner logo. An alliance contact." So

25 somebody at Lawson who will be responsible for trading

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1   A Yes.

2   Q There's a heading there called "Integration

3   Process"?

4   A Yes.

5   Q And it says, "Vendor/B2B partner connectivity."

6   Do you see that?

7   A I do.

8   Q What's your understanding as to what is being

9   discussed here?

10 A This is talking about the integration between the

11 Lawson Punchout capability and the technical items

12 that a Punchout vendor needs to have in order to do

13 this communication.

14 Q Is there further detail as to the Punchout setup

15 request provided in this document at page 6?

16 A Yes, there is.

17 Q I certainly don't want to go into all the detail

18 of that code that's there, but can you tell us

19 generally what your understanding is that is being

20 depicted there?

21 A Well, Mike, if you could do the bottom half of the

22 page.

23   In this exchange of information that's required

24 between Lawson and the Punchout partner, all the data

25 that's being exchanged has to be in a particular

680

1   partner. "Access to Punchout specifications." And

2   "Listing in the Lawson's Partner directory."

3   THE COURT: Does your screen stay on?

4   THE JURY: Yes.

5   THE COURT: How about you-all? Are yours

6   going out on you?

7   THE LAWYERS: No.

8   THE COURT: I think it's just me. What

9   happens is I tap it and it will come back on

10 sometimes. Go ahead. Excuse me.

11 BY MR. ROBERTSON:

12 Q Dr. Weaver, I'd like you to take a look at

13 Plaintiff's Exhibit No. 212. And that is in Volume V.

14 And it's entitled, "Vendor Implementation Technical

15 Specifications Punchout Connectivity." Have you

16 reviewed this document?

17 A Yes, I have.

18 Q What is it?

19 A Lawson is providing the specifications that are in

20 this document to their Punchout trading partners

21 explaining how they implement this connectivity that I

22 talked about between the partner and Lawson. All

23 those exchanges of messages and formats and so on.

24 Q Can you go to page 3 of the document with the

25 Bates label 372?

682

1   format.

2   This is the format for just one of those functions

3   I talked about, the Punchout setup requests. So these

4   things like the data type definition and the computer

5   elements and the attribute list, all of this is just

6   an explicit listing of what data is required, in what

7   order it's required, what kind of data it should be.

8   Should it be digits, should it be alphabetic

9   characters. It's a complete specification of what's

10 needed to do the communication.

11 Q Earlier you talked about the Punchout setup

12 request when you were discussing that diagram?

13 A Eight-step diagram.

14 Q Is that what's being described there?

15 A Yes. This is the Punchout setup request.

16 Q If you turn to the next page, it says Punchout

17 setup response. Do you see that?

18 A So here is more code for Punchout setup response.

19 Q Next page is the Punchout order message or PO

20 requisition. Do you see that?

21 A Right.

22 Q Can you explain that as well?

23 A It's the same type of thing. It's the data type

24 definition for what occurs when and what type of data

25 has being transmitted.

683

1 Q Page 11, there's a discussion of the purchase

2 order?

3 A Yes, same type of thing for purchase order.

4 Q So who is providing all this code?

5 A All of this is being provided by Lawson.

6 Q So, Dr. Weaver, you've indicated earlier, you did

7 a demonstration concerning the operation of the Lawson

8 system with this procurement Punchout functionality;

9 is that right?

10 A That's right.

11 Q Why don't you preview it and tell us what we're

12 about to see here.

13 A All right. So I'm going to go to one of those

14 drop down menus. I find shop menu. I'm going to

15 click on Punchout. And then I'm going to go shopping

16 at two Punchout sites.

17 Q For the record, the video is Plaintiff's Exhibit

18 No. 368, and the hard copy screen shots of that video

19 are Plaintiff's Exhibit 367.

20 A Ready?

21 Q Yes.

22 A Okay.

23 Q I'm going to try not interrupt you so much this

24 time.

25 A So we're just looking at the screen of the laptop.

684

1 Continue. I'll click on Internet Explorer. I'll go

2 to favorites.

3   THE COURT: Before do you that --

4   THE WITNESS: Stop.

5   THE COURT: Just one minute.

6   Are you able to see your screens all right or

7 would it we better if we turned the lights out?

8   THE JURY: I'm okay.

9   A JUROR: I just need bifocals.

10   THE COURT: We don't provide those.

11   A JUROR: I know.

12   THE COURT: Okay. Excuse me, Dr. Weaver.

13 A So I've chosen the favorites tab, and the drop

14 down menu, and I chose the Lawson portal. Continue.

15   I do my user name and password. I login. So

16 there's a brief wait here, but I'll arrive at the

17 Lawson portal home. Okay. I'm finally there.

18   So I'll go over to that requisition self service,

19 and I'll come down to the shopping tab as I did

20 before. Stop.

21   So now here I am at the entrance to the shopping

22 module. I'm going to go up here to find and shop.

23 And I'm going to drop down that menu and choose

24 Punchout. Continue. Stop.

25   Before I get to making a choice of the Punchout

685

1 sites, I want to show you up here at the top the URL,

2 Universe Resource Locator, Web address that we're

3 talking to right now is this

4 lsfserver.corpnet.lawson. com. So that's the server

5 that is providing all the Lawson software that I'm

6 seeing here, which is the requisition self service.

7 But I want you to notice that URL because it's going

8 to change, and that's an important part of the case.

9 Continue. Stop.

10   So you notice that two icons were displayed. Dell

11 and Staples. So these are the two Punchout partners

12 that were available in the demonstration system that

13 we were given.

14   THE COURT: Do you know, Dr. Weaver, if you

15 hadn't been limited to these two, the two that you

16 were given, when you hit the Punchout button on the

17 drop down menu, would all of the punched out partners

18 come up in here or do you know that?

19   THE WITNESS: It would be all of the Punchout

20 partners that this customer had an agreement with.

21   THE COURT: So this customer first has to go

22 in and say, I want to do business with Dell, Staples,

23 Office Depot, Home Depot, whatever?

24   THE WITNESS: That's right, but there has to

25 be an agreement between the parties so that the

686

1 catalog can be customized and the prices can be

2 customized for customer.

3   THE COURT: Okay.

4 BY MR. ROBERTSON:

5 Q There's an agreement between Lawson and its --

6 when Lawson provides this Punchout capability, the

7 customer can tell Lawson what Punchout websites it

8 wants to go to?

9 A Exactly.

10   MR. McDONALD: Objection, leading.

11   THE COURT: Went out with the Coolidge

12 Administration on something like this.

13   MR. McDONALD: I have to have an objection to

14 move.

15   THE COURT: I know you need to move, but

16 that's --

17 Q I just want to follow up on the Judge's questions

18 because there was some ambiguity between who the

19 agreements were between. Does the Lawson customer

20 who's going to use this Punchout module, do they tell

21 Lawson what Punchout website they want to be able to

22 go to?

23 A That's correct.

24 Q So then Lawson puts that capability on this

25 Punchout module?

691

1 the Staples item number. There's the manufacturer

2 number. The unit of measure and the price.

3   All right. Continue. Stop. What I did there was

4 click. In fact, Mike, can you back up a little bit?

5 I was too slow on the draw.

6   Okay. Stop. So I showed you that the catalog

7 items where I'm going next, that was the catalog

8 information. And what, if I can draw, what I'm going

9 to do next is click on delivery date. So I'm going to

10 check whether or not this item is available in

11 inventory.

12   Continue. So click on delivery date. Stop. So

13 here is the information that we saw before plus --

14   THE COURT: We've got a problem.

15   MR. McDONALD: Thank you, Your Honor. I'm

16 just trying to keep up with the paper version, but my

17 version of 367 ends here. Sorry, Your Honor.

18   THE COURT: You have a lot of paper. You all

19 have done very well with all that paper. Just a few

20 little slip-ups shows me that the legal assistants

21 have been doing what they should have done.

22   MR. McDONALD: I agree.

23   THE COURT: They are all human, but there

24 have been very few problems. So don't you worry about

25 it.

692

1   MR. McDONALD: Thank you, Your Honor.

2   THE COURT: Have you got it now?

3   MR. McDONALD: Yes, sir.

4   THE COURT: Okay.

5 A   Okay. So now when we look at this expanded

6 information, we see the column of expected delivery.

7 And you notice it says backordered. So this item is

8 not available in inventory. I'm going to have to wait

9 for this. So I'd rather not do that. I wanted a

10 desk. So I'm going to continue. Go back. Go back.

11 So this takes me back into that cherry standard

12 suites.

13   So I'll look for something else. Go to the next

14 page. So now I'll pick this Bush Milano bowfront

15 desk. Here's its description. Stop.

16   And as you saw. So here's the catalog

17 description. Here's the item number. Here's the

18 manufacturer number. Here's the unit each and here is

19 the price. And we also have the opportunity to check

20 the delivery date on this. So I'll do that.

21   Continue. Click delivery date. Stop. And we

22 have a specific expected delivery date. Nothing about

23 backordered. So this item is available in inventory.

24 So I'll take this one.

25   So we continue. I add this to my order. Stop.

693

1   So this is my order as it stands here at Staples.

2 Notice that we're co-branded here with both Lawson and

3 the Punchout partner.

4   Okay. So that's the item that I want. So I'll

5 add that to the order. Continue. Stop. Review my

6 order. Stop.

7   So here's the same information that we saw before.

8 Looks good. So I'm now going to submit this order to

9 Staples.

10   So continue. Stop. So back to that 8-step

11 diagram I talked about, the exchange of information.

12 One of those steps was having the Punchout trading

13 partner take the content of the shopping cart and

14 return that information to Lawson. And so that is

15 what has happened with this last screen change.

16   Here's my Lawson shopping cart with that Bush

17 Milano desk in it. So I'm going to shop some more.

18 So we continue. I'll go to Dell. So now were at the

19 Punchout Dell site. And let me just stop.

20   Once again, I'll point out here that URL you see

21 from the Lawson server, the Dell site has provided a

22 different URL different the normal Dell site. This

23 one is signin.Dell.com/Delllogin/portal/login.aspx.

24 ASPX is programming language. So I've been redirected

25 to this Dell training partner site.

694

1   Continue. Go full screen. And now I do a keyword

2 search for printer. I'll look at some printers. Go

3 to the next page.

4   I'll pick this Kodak Easy Share Printer. So I

5 drill down on this. Stop. And I've got the title.

6 I've got the description. I've got the price, but the

7 catalog tells me that it's temporarily out of stock.

8 Please check back soon. So this item is not available

9 in inventory. Okay. So I'll go get something else.

10   Continue. So I go up here to photo printers. And

11 look at the selection available from Dell for that.

12 Here's a Canon wireless printer. Stop.

13   Got my description. Got my price. Usually ships

14 within 24 hours. In addition, there's this other

15 information, the manufacturer part number. The Dell

16 part number and the UNSPSC code.

17   So this usually ships within 24 hours. So this

18 one is available in inventory. So I'm going to take

19 this one. So continue.

20   So I'll add this to the cart. All right. So

21 here's my Dell shopping cart. So it has the order

22 information. I'll create the order. Then Dell has

23 some trade compliance requirements not relevant to us.

24 Continue.

25   All right. Stop. Now, I guess we better continue

695

1   so we can see the descriptions. So continue. Right.

2   Now stop.

3   So here is that wireless printer. Look at the

4   information. It looks good. So I'm going to submit

5   this order. So continue. Stop.

6   So now I have exited the Dell partner site and I'm

7   back into the screen from the Lawson Punchout. And

8   notice that it says I'm retrieving items. So, again,

9   as part of that 8-step process flow between Lawson and

10 the trading partners, now Dell is taking the content

11 of the Dell shopping cart and returning that as the

12 Punchout order document, which is now being accepted

13 and saved by the Lawson system, and then we're going

14 to see that it will go into the Lawson shopping cart

15 up here. So continue. Stop.

16   So there is my wireless printer up here along with

17 my Bush Milano desk. All right. So those are the

18 only two things I wanted. So I now am going to

19 checkout from the Lawson shopping cart. Okay.

20 Continue.

21   All right. Stop. So this has created an order

22 within Lawson with the number, the identifier 919.

23 Like the first demonstration, this one needs approval.

24 So we'll March through that. So continue.

25   So back to the portal. Login as the manager.

696

1   Find the requisition. It's 919. Get the requisition.

2   Take a look at it. Okay. Stop.

3   I'm sorry, Mike. I went a little too long. Would

4   you back up just a tad? That's it.

5   So you see we have two line items here; the desk

6   and the printer.

7   When we scroll down here, you see we've got item

8   numbers and we've got manufacturer numbers. So

9   continue.

10   All right. So looks good to me. I'm going to

11 approve it. Okay. We've got that. So now I'm going

12 to run a PO 100 program. So like we saw before, I'll

13 enter a job name and a job description. I'll call it

14 requisition No. 919. I'll fill in these other items

15 that I need to below. Give it a delivery day of five.

16 Release the purchase order. Don't need the filters.

17 Back to main.

18   Okay. So this goods good. Looks good. I'm going

19 to add it. Now I'm going to submit the job to run.

20 And I explained about foregrounds and backgrounds. So

21 this is going to run and create the POs. So here's

22 the submission.

23   So now the POs are being created and in just a

24 second I can look at them. Give it time to process.

25 And then I'll go up and click on print manager.

697

1   I'll pick up requisition 919. Stop. And so here

2   we have the header of the PO that tells who is doing

3   the buying. It's our good old Metropolis Medical

4   Center. And then we'll scroll down to see the items.

5   Continue. Stop.

6   So here's our first PO. So it's coming from

7   Staples. It has a vendor item number. It's our Bush

8   Milano desk. It's a quantity of one. It's an unit of

9   each. And the PO is released. So the purchase order

10 has been created and released for this desk that I've

11 ordered from Staples.

12   Scroll down. Continue. Stop. So here's my

13 second PO. So this one is the wireless office

14 printer. It's coming from -- I'm not getting my

15 arrows. Oh, well. It's coming from Dell Computer.

16 It's got a vendor item number. The purchase order has

17 been released, and then at the bottom of this entire

18 document the report is complete and two purchase

19 orders were created.

20   So from my Punchout I picked a desk. I found out

21 it was not available in inventory. I picked another

22 desk. Put it in my shopping cart. Went to Dell.

23 Picked a printer. Found out it was not available.

24 Picked another printer. Put it in my shopping cart

25 checked out. Brought that back to Lawson. Created a

698

1   requisition. Created, in this case, two purchase

2   orders. That's it.

3   Q   Thank you, Doctor. So with respect to this

4   demonstration, just like I asked you with respect to

5   the last demonstration, at a high level, I didn't want

6   to go through all the claim terminology right now, but

7   were we able to see in that demonstration that there

8   were at least two product catalogs?

9   A   Yes.

10 Q   Were you able to select the product catalogs?

11 A   Yes.

12 Q   Were you able to search for matching items in

13 those catalogs?

14 A   Yes.

15 Q   You did that?

16 A   I did that.

17 Q   Were you able to build a requisition?

18 A   I did it.

19 Q   Were you able to generate a purchase order?

20 A   I did.

21 Q   Did you see information about whether a product

22 was available in inventory?

23 A   Yes, for the desk and the printer.

24 Q   And there were images of the product?

25 A   Since they were Punchouts we had images for all of

699

1 them.

2 Q Were there various descriptions and associated

3 information with the items?

4 A We saw the vendor item number. We saw the

5 manufacturer item number. We saw a description.

6 Q Did you see price?

7 A We certainly saw a price.

8 Q Was everything you saw there consistent with your

9 understanding of what a catalog is as defined by the

10 Court?

11 A Yes, it is.

12 Q Thank you.

13   I'd like to talk, just a little bit, about some

14 representatives that Lawson has made about how to

15 select among product catalogs if we could because

16 there's some dispute about whether there's one catalog

17 or more catalogs.

18   Could you go to -- let me first ask you what are

19 some of the item attributes that can be used for

20 selecting product catalogs to be searched?

21 A Well, we could use vendor item number. We could

22 use vendor name. Manufacturer item number.

23 Manufacturer name. Or partial description of the item

24 or the UNSPSC classification codes.

25 Q Going back to Plaintiff's Exhibit 170 again. This

701

1 Q If you could go to the page that has the Bates

2 label 6172.

3 A Okay.

4 Q Again, we're talking about functional capability

5 here about expanded search. Do you see that?

6 A Yes.

7 Q Just confirm for me this is Lawson's response to

8 this request by the Public Health Trust, Jackson

9 Health system; is that right?

10 A That is correct, but we need to get the right page

11 up here.

12 Q If you'll look at the bottom, it has Bates No. 150

13 of 307. Right at the bottom middle.

14 A Your page numbers are different than mine, but I'm

15 on the right page.

16 Q You're on the page that ends 6172?

17 A 6172, but that's not what's on the screen.

18 Q Okay.

19 A There we go.

20 Q We were discussing here functional capability and

21 expanded items searched by. Do you see that?

22 A Yes.

23 Q It says here "vendor catalog number." What does

24 Lawson say about its availability?

25 A Under the currently available column, it says yes.

700

1 is a response to an RFP. Specifically at page 37,

2 question 12. Are you with me?

3 A Not on page 37.

4 Q Of 170.

5 A 170. Right. So let's do the Bates number.

6 Q I'm sorry. 884.

7 A Okay.

8 Q In this question, the requester is asking does the

9 system have the ability for expand the item search by

10 a vendor catalog number, partial description,

11 manufacturer code, classification code, vendor name,

12 and manufacturer name. What does Lawson indicate of

13 its ability to do that?

14 A They put an X in column A, which says that that

15 capability is installed and is available.

16 Q Thank you. I'd like to go to Exhibit --

17   THE CLERK: I'm sorry. We couldn't hear you.

18   THE COURT: Which exhibit?

19   MR. ROBERTSON: Plaintiff's 215.

20 Q Again, this is in response to an RFP. Do you see

21 that, Doctor?

22 A Yes. This is the response to Jackson Health

23 System.

24 Q And it's dated May 18, 2006?

25 A Correct.

702

1 Q And partial description of item, e.g. wildcard

2 contains, etc.?

3 A Yes.

4 Q Manufacturer catalog number?

5 A Yes.

6 Q Classification code?

7 A Yes.

8 Q Vendor name?

9 A Yes.

10 Q Manufacturer name?

11 A Yes.

12 Q Are you aware of the contention that Lawson

13 maintains that an item master is a single catalog

14 rather than a collection of catalogs?

15 A Yes.

16 Q Do you agree or disagree with that?

17 A I disagree.

18 Q Why is that, sir.

19 A I think if you have multiple vendor catalogs and

20 you import them into a single database, you have one

21 database, but you still have multiple item catalogs

22 because it has all of the information in it that was

23 originally in the vendor catalogs.

24 Q And what about with respect to the Punchout

25 catalogs that were available? Do you have an opinion

703

1   as to whether that's a multiple catalog availability
2   or a single catalog?
3   A   Well, as we just saw when we did our Punchout
4   Staples and Dell, those were two completely separate
5   catalogs on separate websites run by different people.
6   So those are unquestionably separate catalogs.
7   Q   Do you have an understanding about whether the
8   '683 patent, for example, requires catalogs to be
9   searched simultaneously?
10   A   It does not.
11   Q   Did the Court in any of its claim constructions
12   have that requirement?
13   A   No, that's not in the claim construction.
14   Q   Does the Lawson system have the capability of
15   enabling you to select search first a product catalog
16   and then subsequently select a search in another
17   product catalog?
18   A   Yes.
19   Q   Do you see that in any of your demonstrations?
20   A   Yes, we did. The Bush or Basyx.
21   Q   In the demonstration in Punchout, did we see that
22   ability to select those product catalogs?
23   A   Yes, we did because we saw that in Dell and in
24   Staples.
25   Q   Why don't we talk a little bit about searching for

704

1   selected product catalogs using the Lawson keyword
2   index?
3   THE COURT: Excuse me. Before you do that,
4   are you saying in your view item master is not a
5   single catalog but is a multiple catalog because it
6   has imported into it all number of parts of other
7   catalogs?
8   THE WITNESS: Well, let me just be clear.
9   THE COURT: Yes.
10   THE WITNESS: If the item master is built by
11   importing multiple vendor catalogs, then in my opinion
12   is that database contains multiple vendor catalogs.
13   THE COURT: But what if it is built by
14   importing part of multiple catalogs, parts of
15   catalogs?
16   THE WITNESS: In my opinion, it's still
17   multiple catalogs.
18   THE COURT: I just want to know -- and it's
19   because in those instances you think it's a function
20   of importation?
21   THE WITNESS: Yes, sir.
22   THE COURT: All right.
23   BY MR. ROBERTSON:
24   Q   Does the Lawson system have the capability of
25   importing multiple vendor catalogs?

705

1   A   Yes. We saw that in the documentation with the PO
2   536 program.
3   Q   Did you see representation that Lawson said they
4   could import multiple catalogs?
5   A   Yes, we did.
6   Q   So I did want to address this searching the
7   selected product catalogs using Lawson's keyword
8   search. You're familiar with that?
9   A   Yes.
10   Q   Are you familiar with Lawson's contention that it
11   searches the entire item master and therefore the
12   Lawson systems don't, and its search engine, does not
13   search only selected portions of catalogs, but rather
14   the entire item master?
15   A   I'm aware of that, but I disagree with that.
16   Q   Why do you disagree with that?
17   A   Because the way that the system is built it uses a
18   search index. If you think about building a complex
19   system, you would never build it such that you had to
20   search through every single item in order to match a
21   search query. It would take forever if the database
22   was of any size. So that's not the way relational
23   databases get built.
24   Instead there's a search index, and so like the
25   index of a book, you have keywords, and they point to

706

1   where in the database those items reside.
2   So if I do a keyword search for Dell, I look it up
3   in the index, and that tells me where the Dell items
4   are, and I only look at those.
5   Q   Do you have any demonstratives that you prepared
6   to help illustrate this point?
7   A   I do.
8   Q   Could we go to 09 at page 15. Okay. Here you
9   have a definition of an index from Webster's New World
10   Computer Dictionary. What significance here should we
11   be focused on as you talk about this computer search
12   index that's being utilized?
13   A   This part here. When searching or sorting the
14   database, the program uses the index rather than the
15   full database. Such operations are faster than sorts
16   or searches performed on the actual database.
17   Q   As a computer scientist, is using an index in
18   order to search a relational database something that
19   is utilized in order to make those faster searches?
20   A   Absolutely.
21   Q   Do you know how the Lawson's system search index
22   is created?
23   A   Yes.
24   Q   What is that?
25   A   There's a process by which keywords are defined

707

1   that are going to become searchable. So there's a

2   keyword search setup program that you run, and then

3   after you've defined what keywords are going to be

4   searchable and you've got your database loaded, and

5   the item master is now full of data, you run the

6   keyword search load program. That builds the index.

7   And now until you have changed the database, you

8   have got an index into all the searchable keywords

9   that -- all of the keywords that were chosen to be

10 searchable.

11 Q   Are some of those keywords like item description,

12 item number, classification code that you've been

13 addressing already?

14 A   Yes, they are.

15 Q   Which database tables is the search index built?

16 A   I'm sorry. Say that again.

17 Q   Sure. From which database tables is the search

18 index built?

19 A   The item master. Well, and the vendor item table,

20 too.

21 Q   Once the user has selected the field of the item

22 data that are to be searchable, what is the next step

23 in building this index?

24 A   So after you have chosen your keywords, you have

25 to load them all, and then you -- the computer system,

709

1   A   The first two paragraphs. You can search the

2   catalog, which will search for items in your item

3   master or vendor items. It also allows you to search

4   for keywords for up to 29 fields based on your set up.

5   You can also search based on categories which can use

6   the UNSPSC code categories. And I think we've heard

7   the rest of that before.

8   Q   We've gone over that. Let me direct you then to

9   page 12 of the document. Is this a Lawson keyword

10 search setup proposal?

11 A   Well, this is the training guide and --

12 Q   This is teaching the customers how to set up the

13 keywords?

14 A   Yes, it is.

15 Q   What's the next page?

16 A   Keyword search load.

17 Q   What is that?

18 A   So that was the second program that you have to

19 run. The first one, the keyword search set up, this

20 is where you choose which of the 29 different fields

21 will become searchable. So after you have got them

22 chosen, and you've got your item master database

23 loaded, then you run the keyword search load, and it

24 builds the index.

25 Q   Then if you will turn to page 29. There's a slide

708

1   the keyword search load program, builds this index

2   that is search engine then uses thereafter.

3   Q   Can you take a look at Plaintiff's Exhibit

4   No. 136. It's in Volume III. It's entitled,

5   "Requisition Self Service 8.1, 9.0."

6   A   Yes.

7   Q   What is this exhibit, if you know?

8   A   This is a training program for requisition self

9   service. This particular one is a copy of what a

10 human trainer would be using in terms of slides and

11 notes. So if you're familiar with Microsoft

12 PowerPoint, it has a notes feature. So here is the

13 slide itself, and below it are the notes. So if I

14 were a trainer training you as an RSS class, I would

15 be showing you this picture up here, and then this

16 would be my reminder text of what I wanted to tell you

17 about the slide that I'm showing you. Instead of

18 having an audio recording, you've got words.

19 Q   Is this a presentation that Lawson gives to train

20 its customers?

21 A   Yes.

22 Q   Why don't we go to page 3 of the document, if we

23 could. It's Bates label is 687.

24 A   Right.

25 Q   What would you like us to focus on here?

710

1   there that says "creating a requisition by searching

2   the catalog"?

3   A   Yes.

4   Q   What's being depicted there?

5   A   So this is something that we have seen. When I

6   did the catagory search and picked items and built a

7   requisition. So it says down here, When using the

8   search catalog task, you enter the value you want to

9   look for in the search field. As soon as you type in

10 the third letter, the system begins searching for the

11 matching keywords and displays the result as a drop

12 down list.

13   Keywords exist because you enable certain fields

14 as searchable in this IC00.5 program and run IC800 to

15 build keywords from these fields.

16   So that's the setup and load. IC800 is the

17 keyword load.

18 Q   So what if anything do the pages of this document

19 have with respect to your understanding of how the

20 Lawson system or whether the Lawson system uses a

21 search index to conduct its searches?

22 A   Well, it absolutely does such that it need not

23 search the entire database. That's what keyword setup

24 is about and how a keyword load turns that into an

25 actual index.

711

1   Q   So once you have enabled the keyword terms and you

2   built the search index, how does the Lawson search

3   engine conduct a search of the item data in the

4   database?

5   A   So if I type in a word into a text box, say Dell,

6   and engage the search engine, it goes to the search

7   index. It looks up Dell. It finds records in the

8   database that match the keyword Dell. And then it

9   extracts that data from the database and presents that

10   to me on the screen.

11   Q   Do you have a demonstrative you prepared to try

12   and illustrate how this search index operates?

13   A   I do.

14   Q   What's being illustrated here, sir?

15   A   Okay. So up here at the top we have the text box,

16   which is the search query. I don't know where that

17   popping is coming from.

18   THE COURT: That's because you, like some

19   witnesses, but not all, articulate your P's in a

20   particular way at a particular length from the

21   microphone, and there isn't anything that we've been

22   able to do about it. And it's not your fault. It's a

23   function of the way things are.

24   THE WITNESS: Thank you, Your Honor.

25   THE COURT: It's annoying, but --

712

1   THE WITNESS: I would have worried about that

2   all night.

3   THE COURT: Well, don't.

4   MR. McDONALD: As long as he doesn't use the

5   T sound for the rest of the testimony, it's fine.

6   THE COURT: No, it's a P, generally.

7   Does this have an exhibit number?

8   MR. ROBERTSON: No, Your Honor. It's simply

9   demonstrative.

10   THE COURT: All right.

11   A   So we have our keywords at the top, our query

12   text, and for this example I want to look for the

13   keywords Dell and monitor. We'll assume that we have

14   enabled at least two fields, two keyword fields to be

15   searchable. One of them would be a user-defined field

16   for the manufacturer. We haven't actually talked

17   about user defined fields yet, but this is part of the

18   Lawson product. So a user defined field or

19   manufacturer has been determined to be searchable. It

20   has been declared to be searchable. And a second

21   field, the item description, which is one of the

22   fields, one of the 29 fields supported by Lawson, that

23   one has also been declared to be searchable.

24   Now, after I do the search load and I build my

25   index, then what I have is for each of the entries in

713

1   the user-defined field for manufacturer, like Dell or

2   Hewlett-Packard or Gateway, for each of those I have

3   pointers into the database that tell me where I will

4   find a record, a product, in which the Dell keyword

5   was located in the user-defined field for

6   manufacturer.

7   Likewise, for the item description fields, if I've

8   got a database that contains keywords like keyboard

9   and mouse and monitor, every time a descriptive term

10   is found that is searchable for item description like

11   keyboard, in this database there are pointers from the

12   index into the database that say where that item is

13   found.

14   So the way this then works is when I put in Dell

15   and monitor, the search engine goes to the search

16   index, finds the keyword Dell, finds all of the places

17   that the keyword Dell would appear in the database.

18   In this case its locations are 10, 20, 25, 26, 27 and

19   28.

20   Then it would look for the next keyword in the

21   query box. That's monitor. It would look up all of

22   the places in the database where monitor appears as

23   keyword. And that's 15, 16, 17, 19, 20, 21, 22, 23,

24   25 and 27.

25   Then having found where the records containing the

714

1   keyword Dell are located and where the records

2   containing the keyword monitor are located, then we do

3   the intersection of those. That is, from those two

4   lists of numbers, we find where the numbers are

5   exactly the same.

6   So in my example here, 25 and 27 are the database

7   records that contain both the keywords Dell and

8   monitor.

9   So I go fetch records 25 and 27. And that's what

10   I display to the user. So I don't search the whole

11   database. I just the index to search selected parts.

12   THE COURT: Mr. Robertson, what is this

13   testimony related to? We had that at the beginning.

14   Now we've had a lot of testimony, and I'm confused a

15   little bit, and the jury may be, about what exactly

16   this line relates to. Does it have to do with whether

17   there's a search of a single catalog or not? Is that

18   what we're still on?

19   MR. ROBERTSON: No, Your Honor. There are

20   some claims that say you have to search portions of

21   the database or search among the selected catalogs.

22   And so in order to search portions of the database,

23   you need a search index. Lawson contends that the

24   index is -- that the search searches the entire

25   database all the time. So, therefore, they can't

715

1 satisfy the selected portions.
2   So they employ a search index in order to be
3 able to go quickly to find the data record that they
4 need.
5   THE COURT: I understand. I have this
6 question now. The database that is being searched in
7 either version, either Lawson's theory or ePlus'
8 theory, is made up of what?
9   THE WITNESS: What is the database made up
10 of?
11   THE COURT: Yeah, what's it searching?
12   THE WITNESS: Well, it uses the index to
13 search the item master and the vendor item table.
14   THE COURT: It's searching the item master
15 and --
16   THE WITNESS: Let me be more precise.
17   THE COURT: I know we're talking about
18 searching catalogs, and I think I'm confused about
19 what the issue is. So go ahead and try it again.
20 A So what's going on is that there are many keyword
21 fields like item number, item description, these
22 user-defined fields that can be marked as searchable.
23 This's part of the setup.
24   Then when information is loaded into the item
25 master and vendor item table, you use this keyword

716

1 search load program, and it builds this index, the one
2 that I'm showing on the screen.
3   Thereafter, whenever I do a search, I'm using the
4 index to search only selected parts of the database,
5 not the whole database.
6   THE COURT: All right. I understand that,
7 but the database is what?
8   THE WITNESS: The database is the item master
9 table and the vendor item table.
10   THE COURT: And the database contains
11 extracts or parts of different catalogs, right?
12   THE WITNESS: Each item record and item
13 master represents some product from a vendor catalog.
14 BY THE COURT:
15 Q Doctor, let me ask you this.
16   THE COURT: I think I may be confusing things
17 more than I am doing any good. So I'll leave it
18 alone.
19 BY MR. ROBERTSON:
20 Q Have you ever seen this search index being
21 analogized to an index for a book, for example?
22 A I have.
23 Q If we had a book that was his history of the Civil
24 Wear, and it had an index with a number of topic
25 headings and number of pages. If I wanted to go to

717

1 the Battle of Vicksburg, instead of going through
2 every single page of the book to find the chapter on
3 the Battle of Vicksburg, how could I use an index in
4 order to go directly to where that data record would
5 be located in that database, if you will?
6 A That's a good analogy. So if I've got this Civil
7 War history book and I want to learn about Battle of
8 Vicksburg, I don't start on page 1 and go to page 2
9 and 3 and 4 reading it all to see if it says anything
10 about Battle of Vicksburg.
11   I go to the back to the index. I look up under
12 the alphabetical list. I looked up V. I find the
13 Battle of Vicksburg. And it says pages 301 and 402.
14 So I go back to the book and I look up pages 301 and
15 402. And those are the data record items that are
16 analogous to the Lawson system.
17 Q So referring back now to your demonstrative,
18 what's happened is someone has assigned essentially a
19 number to a particular topic, and those can actually
20 be cross-referenced, is that right, to go immediately
21 to where the data record is locate in the database?
22 A They're not cross-referenced, but they are
23 pointers into the database.
24 Q And using those pointers, you can quickly go to
25 the record rather than going through every single

718

1 record that's in the database?
2 A Exactly.
3 Q And just so I can -- this is relevant to Claim One
4 of the '172, for example. Do you have that in front
5 of you?
6 A This is the database claim.
7 Q It's Plaintiff's Exhibit 3, for example. Go to
8 Claim One. We'll just focus on that first element.
9 Some of the other claims now, Doctor, you have seen
10 that they have referred to at least two other product
11 catalogs?
12 A Yes, we've seen a lot of those.
13 Q In this Claim One, there's not a catalog
14 requirement, is there?
15 A No, nothing about catalogs here. It's talking
16 about a database.
17 Q If we could just highlight that first element. So
18 here it says a database containing data relating to
19 items associated with at least two vendors maintained
20 so that selected portions of the database may be
21 searched separately. Do you see that?
22 A I do.
23 Q Is this index a useful tool in being able to
24 search selected portions of the database separately?
25 A Yes, it is.

719

1   Q   Let me ask to you look down at Plaintiff's Exhibit

2   No. 136, I believe. I'm sorry. I apologize. 127,

3   which is the first exhibit in Volume III. Have you

4   seen this document before?

5   A   I have.

6   Q   It's entitled, "Application Design Document for S3

7   Item Search Center."

8   A   Correct.

9   Q   Let me direct you to the page that ends with Bates

10 label 060.

11 A   Okay.

12 Q   The heading there, it's 3.1 S3 item search. Do

13 you see that?

14 A   Yes.

15 Q   This S3 product, is that the procurement system

16 that Lawson offers that's being accused here?

17 A   It is.

18 Q   What does it represent here with respect to the

19 search index that's available for Lawson?

20 A   The S3 item search center has the capability to

21 search for item information within the item master,

22 the item master table. Item location, item loq table,

23 and vendor item, P.O. item inventory table.

24   The table below lists the database tables and

25 fields that are searchable.

720

1   Q   What does that indicate to you?

2   A   So what we have here are a list of fields that can

3   be marked as searchable. And then this index is built

4   from these fields.

5   Q   Does it include vendor item?

6   A   The first one is vendor item. The second one is

7   description. And below that we have what I referred

8   to earlier as user-defined fields. So there are five

9   user-defined fields, which simply means that the user

10 can use them anyway the user likes. You could use the

11 field as a vendor code, for example.

12 Q   Going to the next page, is it also indexed for

13 commodity code?

14 A   Yes, there's commodity code, there's stock unit of

15 measure, and down at the bottom is vendor.

16 Q   Can you turn to the last page of Plaintiff's

17 Exhibit 127, and there's an asterisk there that

18 says -- well, why don't you tell me what you

19 understand that to mean?

20 A   After vendor was the asterisk. And on this page

21 the asterisk is explained. This is true for more

22 fields than just vendor. These elements can only be

23 used in combination with a search value to filter the

24 results of a search.

25 Q   Can you translate that for us? What does that

721

1   mean?

2   A   So in the advanced search page that is a part of

3   this system, you can put in keywords that you want to

4   search for, and you can put in keywords that you want

5   to ignore.

6   Q   Does this table tell us anything about whether you

7   can search in the Lawson S3 system by vendor?

8   A   It says you can.

9   Q   Now, you reviewed Lawson's expert report; is that

10 right?

11 A   I did.

12 Q   Do you know whether or not he acknowledged that

13 the vendor name field can be used in combination with

14 another search value to filter the search by vendor

15 name using this search functionality?

16 A   He did.

17 Q   Dr. Weaver, I'd like to talk to you a little bit

18 about the '516 patent claims, and we're going to have

19 a video at some point with respect to some of that

20 functionality that's claimed in that patent; is that

21 right?

22 A   Yes.

23 Q   Can we just go to Claim One of '516? Now, this is

24 a fairly lengthy claim, Doctor, and I certainly don't

25 want to take the time to read it into the record here,

722

1   but at a high level, can you tell us generally what is

2   going on here directed to this type of claim and what

3   the elements are doing here with the sort of overall

4   essence of what this claim is?

5   A   Okay. So there's a collection of catalogs.

6   There's a first set of predetermined criteria.

7   Q   That's tricky word. At least it sounds tricky.

8   What is it?

9   A   The things that that could be are many of the

10 items that -- yeah. Many of the things that we've

11 already mentioned like item number, manufacturer

12 number, vendor number, vendor name, description of the

13 product, UNSPSC classification code.

14 Q   These are all criteria that can be used for

15 searching that are determined ahead of time?

16 A   Yes. And then there is a second set of those

17 criteria, and the content of that set could be the

18 same as the content of the first set.

19   Then there's a catalog selection protocol whereby

20 you use the first predetermined criteria to select

21 less than all of the catalogs. And then you use the

22 second predetermined criteria to search within that

23 subset in order to find matching items.

24 Q   So let me see if I understand then. What we're

25 doing here is search refinement. That is, we can

723

1   start out with broad categories and narrow our search
2   in order to arrive at the object of what we want to
3   purchase, for example, in this configuration of
4   electronic sourcing system; is that right?
5   A   Right. So an example would be if my first
6   predetermined criteria was Dell, I could select a
7   subset of the catalogs that contain an item from Dell,
8   and if my second criteria was Dimension 8100, which is
9   a particular Dell model, I could look within those
10   catalogs for those items that are Dell Dimension
11   8100s.
12   Q   Are there some of the catalog selection protocols
13   described there? What is your understanding of what a
14   catalog selection protocol is? First of all, the
15   Court has defined what a protocol is. So let's just
16   that your definition. Do you recall what that is?
17   A   For protocol?
18   Q   Yes. It's on the first page.
19   A   A procedure.
20   Q   So let's call a catalog selection procedure, if
21   you will, since that is the Court's definition, and
22   can you tell us your understanding of that element?
23   What is it?
24   A   So there's a user interface that allows me to
25   input a criteria that's going to select less than all

724

1   of the catalogs.
2   Q   There was criteria we talked about. It could be
3   the first set of criteria. These attributes we've
4   been talking about such as vendor name and
5   manufacturer number, vendor number, textural
6   description?
7   A   Right. All of those I mentioned as examples of a
8   first set of predetermined criteria.
9   Q   Then you can use that second set of criteria that
10   include those in the first set that then refine the
11   search?
12   A   Correct.
13   Q   This last element is search program. Search
14   program relying on said second set of criteria to
15   select specific items from the catalogs for said
16   catalogs determined from the catalog selection
17   protocol. What is going on there?
18   A   So you need a search program that uses that second
19   criteria in order to find specific items within the
20   catalogs that were sub selected by your choice of the
21   first criteria.
22   Q   Do you have a demonstration to illustrate whether
23   or not the Lawson system performs in a manner that is
24   implicated by Claim One of the '516 patent?
25   A   Yes.

725

1   Q   It's been represented to me it's very short.
2   Would you like me to proceed, Your Honor. It's
3   Plaintiff's Exhibit 364 is the video and Plaintiff's
4   Exhibit 363 are the corresponding hard copy screen
5   shots.
6   A   Stop.
7   Q   Dr. Weaver --
8   A   Are you ready?
9   Q   Maybe we should make an effort not to stop as much
10   so we can have more of a narrative if the Court would
11   permit.
12   THE COURT: Whatever he wants to do. I think
13   he was waiting for you to do a question.
14   Q   Can we proceed with the demonstration?
15   A   We can. All right.
16   Q   Can you preview it for the jury and tell us what
17   we're going to see here?
18   A   Yes, we're going to see searching for the first
19   criteria of Dell. And then from those catalogs, we'll
20   see that there are multiple vendors for Dell. And
21   then we'll refine the search with a Dimension 8100,
22   and we'll find that there are multiple vendors for a
23   more specific search inquiry, and that satisfies the
24   elements of Claim One of the '516.
25   THE COURT: What are the exhibit numbers?

726

1   MR. ROBERTSON: 364 is the video and 363 are
2   the hard copies.
3   A   Let's go. Pick the browser. Pick the favorite.
4   Pick the portal.
5   Q   Don't go so fast, Doctor, that we lose the import
6   of the point you're trying to make?
7   A   I have contradictory instructions.
8   Q   I apologize.
9   A   This part you have seen before. So no problem.
10   We're waiting for the portal to load. Okay. We're
11   there. Some requisition self service, shopping, and
12   from our drop down menu we'll now pick search catalog.
13   Stop.
14   So here is the query text box into which I am
15   going to put the first predetermined criteria.
16   Continue.
17   THE COURT: Excuse me. What do you
18   understand the catalog that's being searched in the
19   drop down when it says "search catalog"?
20   THE WITNESS: Well, in this case --
21   THE COURT: Where is it going to search?
22   THE WITNESS: In this case it's searching the
23   database of item master and vendor table and, this
24   contains all the catalogs that are in the internal
25   database.

727

1   THE COURT: But it's not Punchout at all?

2   THE WITNESS: No, sir.

3   THE COURT: Because you have Punchout to get

4   the outside vendors?

5   THE WITNESS: That's exactly right.

6   THE COURT: So you search item master and

7   what do you call it?

8   THE WITNESS: Vendor item table.

9   THE COURT: Vendor item table. It says

10   search catalog. Okay. Go ahead.

11   A So stop. Now, I'm about to enter the first

12   predetermined criteria. I need to tell you, though,

13   that you see over here as part of this advanced search

14   feature there are -- you only see a partial list of

15   keyword fields that can be searched.

16   So if I wanted to really tightly control the

17   aspects of this search, I could go in and pick, say,

18   the item number. I wish I had the -- I'll try this.

19   I can pick the item number. I can pick the item

20   description. I could pick, say, the first alphabetic

21   user field. I could designate what fields I want to

22   be searched by whatever I put in this text box, but

23   what I have done is to click over here on search all

24   the fields.

25   So in my demonstration all of the fields that are

728

1   available are going to be searched using that search

2   index. Okay. Go.

3   So I type in Dell. Stop. So here are the records

4   in the database that include the keyword Dell.

5   Continue.

6   So there are several. Let me pick the first one

7   and drill down on that. Okay, stop. So this is a

8   Dell Dimension 8100 Pentium 4 computer. It's

9   available from Dell Computer. Okay. Continue.

10   I go back. I look at another entry. Stop. All

11   right. Here's a Dell Dimension 8100 Pentium 4, but

12   this one is available from Diablo. The first one from

13   Dell, the second one from Diablo. Continue.

14   Go back. Now, I'm going to add the second

15   predetermined criteria. So I'll put in Dimension

16   8100. I'll search for that. Stop.

17   Now, instead of all entries and catalogs that

18   contain the keyword Dell, I have those catalogs

19   containing the keyword Dell that contain the keyword

20   Dimension 8100. Continue.

21   So here's that first one. That was available from

22   Dell. Here's the second one. It's available from

23   Diablo. And that's important because when we drill

24   down to the claim, what it says is that I have to be

25   able to find an item from one vendor and then the item

729

1   from a second vendor. And that's what I've done here.

2   THE COURT: So you can compare and find one

3   is $1,000 and one is $1,400?

4   THE WITNESS: Yes.

5   THE COURT: And decide which one you want to

6   buy. Do you have the same product?

7   THE WITNESS: In this case I do, yes.

8   MR. ROBERTSON: Your Honor, we're about to

9   move onto another topic. It's not going to be that

10   long, but it's another topic.

11   THE COURT: Well, you're using time

12   measurements of which I am familiar; very short and

13   not that long. What do you have in mind? The jury

14   has been at it for a while. I think this is a good

15   time to let them go home. You get worn out after a

16   while focusing on all the details. You're paying

17   attention carefully and we all appreciate that very

18   much, but why don't you go have a nice evening, and

19   leave your notebooks with Mr. Neal.

20   Drive carefully and don't discuss the case

21   with anybody if you don't mind. Don't go online now

22   and try to find a cheap computer.

23   MR. ROBERTSON: Thank you.

24   (The jury is out for the evening.)

25   THE COURT: Tell them we'll start at nine in

730

1   the morning before they get out of here.

2   How much longer do you expect your

3   examination is going to be? I've interrupted a lot.

4   So I know I've slowed you down. So I'm sorry.

5   MR. ROBERTSON: Don't apologize, Your Honor.

6   It's been helpful in many instances. So thank you.

7   When I sat down at the break, I tried to cut

8   out about 40 pages of it, and I just wanted to make

9   sure I didn't cut out something that was critical. I

10   need to go through indirect infringement and do that

11   at a fairly high level. Then I need to march through

12   the claims, and that takes a little bit of time.

13   THE COURT: I'm just asking you roughly how

14   much time instead of some unit I don't understand.

15   I'm not going to hold you to it. I don't think that's

16   fair in a case like this, particularly when I

17   interrupt and take your time.

18   MR. ROBERTSON: You have been patient, sir.

19   I'd like to look at my outline, but I'm going to give

20   you my best estimate right now, and that would be two

21   hours.

22   THE COURT: We'll start in the morning.

23   Anything else we need to deal with? What

24   about this issue about the briefing on graphic user

25   interface? Did you all discuss that as you told me

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1   MR. ROBERTSON: I don't know who he's going

2   to question about it.

3   THE COURT: I'm sure he's going to question

4   Dr. Weaver based on what he said. Not because I'm

5   prescient or anything.

6   MR. ROBERTSON: I guess I don't have an

7   objection to that.

8   THE COURT: Well, good then. We solved

9   something.

10   Raise the blinds so that in the morning it

11   will be open.

12   All right. I think that's everything. And

13   you don't expect to finish tomorrow, is that right,

14   Mr. Robertson? You don't expect to finish tomorrow,

15   is that what your situation is?

16   MR. ROBERTSON: I do not, sir. I expect Mr.

17   McDonald might have a half an hour or 45 minutes of

18   cross-examination.

19   THE COURT: If you ask your questions bullet

20   points, 30 minutes is plenty. Once you get beyond

21   that, the expert bets you is generally what happens.

22   All right. Okay. So we're not going on

23   Monday. You're going back on Tuesday. Thank you very

24   much. Hope you feel better, all of you. Don't bring

25   anything else up here.

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2   (The proceedings were adjourned at 5:15 p.m.)

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 1         IN THE UNITED STATES DISTRICT COURT
 2        FOR THE EASTERN DISTRICT OF VIRGINIA
 3               RICHMOND DIVISION
 4
 5    --------------------------------------
                                          :
 6    ePLUS, INC.              :  Civil Action No.
                              :  3:09CV620
 7    vs.                      :
                              :
 8    LAWSON SOFTWARE, INC.        :  January 7, 2011
                              :
 9    --------------------------------------
10
11        COMPLETE TRANSCRIPT OF THE JURY TRIAL
12        BEFORE THE HONORABLE ROBERT E. PAYNE
13       UNITED STATES DISTRICT JUDGE, AND A JURY
14
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 1                P R O C E E D I N G S
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 3         THE CLERK:  Civil action number 3:09CV620, ePlus,
 4    Incorporated, versus Lawson Software, Incorporated.  Mr. Scott
 5    L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, Mr.
 6    Michael G. Strapp, and Mr. David Young represent the plaintiff.
 7         Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms.
 8    Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent
 9    the defendant.  Are counsel ready to proceed?
10         MR. ROBERTSON:  Yes, Your Honor.
11         MR. McDONALD:  Yes, sir.
12         THE COURT:  Good morning.  Good morning, ladies and
13    gentlemen.  I was informed by the clerk that you all needed to
14    know the procedure for asking questions, and if you have
15    questions, it's all right.
16         I think the best way to do this is for you to write
17    your question out and then send it up to Mr. Neal, and he'll
18    give it to me, because there's some kind of questions that,
19    perhaps, are better -- I will tell you immediately, I can't
20    answer that or we can't get into that.
21         Others -- and I found this to be the case most of the
22    time.  Other questions are very helpful to the lawyers to have,
23    because if you have -- you are the ones who have to decide the
24    case, and if you have a question, they need to know it and need
25    to work out a way to get the information to you through their
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 1    questions.
 2         So if you feel like you have a question, you can
 3    write them out, send them to me, and I'll take them and look at
 4    them.  Unless it's something that I can't allow, we'll work out
 5    a way to get you the information that you need.
 6         You all look like you're not as drained as you were
 7    when you left yesterday afternoon.  I feel the same way, so
 8    let's get a fresh start.  Let's go ahead, Mr. Robertson.
 9         MR. ROBERTSON:  Thank you, Your Honor.  Good morning.
10
11         ALFRED C. WEAVER,
12    a witness, called by the plaintiff, having been previously
13    duly sworn, testified as follows:
14           DIRECT EXAMINATION
15    BY MR. ROBERTSON:  (resuming)
16    Q   Good morning, Dr. Weaver.
17    A   Good morning, Mr. Robertson.
18    Q   I'd like to start out looking at Plaintiff's Exhibit
19    Number 219, if I could, sir, in binder number five.  Before we
20    get there, I have a few preliminary questions.
21         Do you know whether or not Lawson provides services to its
22    customers to assist them in importing vendor catalog data into
23    its item master?
24    A   Yes, I do.  There was witness testimony to that from the
25    customers.
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1   Q   And did you see any testimony from Lawson personnel that

2   they provide those services?

3   A   Yes, I did.

4   Q   Are you familiar with the nature of those implementation

5   projects that Lawson conducts on behalf of the customers?

6   A   Yes.

7   Q   Can you tell the jury what they are?

8   A   So the Lawson system is quite complex. So this is not a

9   case of going to Best Buy and getting a shrink-wrapped CD and

10   putting it in your computer.

11   All of those modules that we talked about need to have

12   data loaded. They need to be customized for the needs of the

13   individual customer. So the Lawson witnesses, the corporate

14   witnesses and the Lawson customer witnesses, explained that it

15   was very common for Lawson personnel to be on their site for

16   months, sometimes more than a year, in order to get their

17   system brought up, to get data loaded, to get it tested, and to

18   make it operational.

19   Q   So they test the system?

20   A   Yes, they do.

21   Q   Do they train the customer's personnel how to use the

22   systems?

23   A   Yes, and we saw some of the training material yesterday.

24   Q   Do Lawson employees assist the customers in bringing the

25   system live?

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1   A   Absolutely.

2   Q   So back to this Exhibit Number 219 which is a Lawson

3   response to an RFP, if you could take a look at the page that

4   has the barcode 120 which, I believe, will have the Bates label

5   ending 954.

6   A   Yes.

7   Q   And at the top of this document, it says, detailed steps

8   to complete data conversion by proposed data module. Do you

9   see that?

10   A   I do.

11   Q   Can you tell the jury what your understanding is of data

12   conversion in the context of this document?

13   A   Sure. Data conversion means that you are trying to move

14   data from some older system, some legacy system the customers

15   owns, and gets that data reformatted into what is appropriate

16   for the Lawson system. So data conversion is a reformatting

17   issue.

18   THE COURT: Reformatting of the customer's data?

19   THE WITNESS: Of the data -- of the customer's data

20   in a legacy system.

21   Q   Can you explain to the jury what a legacy system is?

22   A   Sure.

23   THE COURT: I don't know that we need to get into

24   that explanation. Just say to a customer's system that the

25   customers has.

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1   Q   Would that be a type of procurement system the customer

2   had, and now they're upgrading or moving over to a Lawson

3   system?

4   A   Yes, sir.

5   Q   On this exhibit at page 120, tell us who is responsible

6   for the data conversion.

7   A   Well, there is a table here that lists various conversion

8   tasks. That's in the first column. In the third column, it

9   says who is the owner of the task; in other words, who is

10   responsible for that particular task.

11   Q   Can you just go through and identify for us those tasks

12   that Lawson is responsible and those tasks that Lawson as well

13   as, in this case, the school district is responsible?

14   A   Sure. So just moving from top to bottom, the first one,

15   provide conversion workbooks, that's owned by Lawson. Conduct

16   a one-day mapping session for each conversion program, that is

17   a Lawson task. Document all conversion programs required,

18   that's a Lawson task.

19   And skipping down a bit, code program logic to map data

20   from legacy or non-Lawson system to Lawson API file layout

21   formats, that is a shared responsibility between Lawson and the

22   district. Create detailed program specifications, develop

23   prototype, unit tests, and document customizations, that is a

24   shared task between Lawson and the school district.

25   Load small sample of converted data, that is a Lawson and

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1   district task, and then skipping down two more, complete data

2   mapping is Lawson and the district. Develop final data extract

3   and mapping programs, that's Lawson and the district, and load

4   converted data for system task is a shared task between Lawson

5   and the district.

6   Q   And turning over to the next page.

7   A   Yes. At the top of the next page, final conversion of

8   live data is Lawson and district.

9   Q   Underneath that, there's a list of conversions included

10   within the scope of this project. Do you see that?

11   A   I do.

12   Q   What, if anything, would you like to direct the attention

13   of the jury to within this conversion scope?

14   A   So in the middle of this document, here is item master,

15   and so the title of that column is the conversion file, and so

16   the item master has to be -- has to convert the data to the

17   proper format for the item master. And over to the right, for

18   the conversion recommendations, it says, all active items.

19   So all active items in the legacy or the non-Lawson system

20   have to be converted, that is reformatted, into the proper

21   format for the Lawson system.

22   Q   Also this purchase order vendor master?

23   A   Yes. I was going to say that just below here is the

24   purchase order vendor master, and to the right of that, all of

25   the active PO vendors. So that file needs conversion as well.

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1   Q   If you'll turn in the same volume you have there, Dr.

2   Weaver, to Plaintiff's Exhibit Number 216?

3   THE COURT: Before you do that, if the customer has,

4   say, catalogs in its system, is that then converted into the

5   Lawson system, too?

6   THE WITNESS: Well, the data in the catalog could be

7   converted, yes, sir. Well, the answer to your question is yes.

8   The catalogs that are in the non-Lawson system, their data gets

9   converted so the same data is now in the proper format for the

10   Lawson system.

11   THE COURT: Who decides what needs to be taken from

12   the old system and put into the -- converted to the Lawson

13   system; Lawson or the customer?

14   THE WITNESS: Well, it's probably a joint decision.

15   The customer would decide what catalog data needs to be

16   converted --

17   THE COURT: No, I'm beyond just catalogs. I mean

18   anything. Of all the conversions, who makes the decisions

19   about what has to be converted for the Lawson system to work?

20   I didn't ask that question right, so try that one.

21   THE WITNESS: That would have to be a joint decision,

22   because the customers would know what catalogs it needs, and

23   Lawson would know what data needs to be converted to make that

24   happen.

25   Q   Does the data sometimes need to be reformulated when it's

750

1   converted from an older procurement system to the Lawson

2   system?

3   A   Yes. That's what the reformatting does.

4   Q   If the customer wants the same catalog data from its older

5   system put into the new Lawson system it's acquiring, it has to

6   tell Lawson what catalog data it wants migrated over to the new

7   Lawson system; is that correct?

8   A   That's correct.

9   Q   In the course of your review of the testimony and the

10   documents, is that a fairly common practice?

11   A   Yes, it is.

12   Q   So we were at Plaintiff's Exhibit 216, and specifically

13   let's go to page seven, if we could. And there's a heading

14   there called proposed application landscape?

15   A   Yes.

16   Q   And going down to the last sentence under that paragraph,

17   it says, the following applications will be implemented upon

18   completion of both phases of the project are completed. The

19   breakout of the application roll-out by phase is described in

20   section 4.1. Do you see that?

21   A   I do.

22   Q   Can we go over to the next page, and there's a box

23   entitled business management system; do you see that?

24   A   I do.

25   Q   Then there's a heading called Lawson procurement suite.

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1   Tell us what you understanding is going on with respect to the

2   scope of the project here that's being implemented?

3   A   Okay, so this is the list of -- this is the list of

4   modules in the Lawson procurement suite that are going to have

5   to be used, so that in this list, there's requisitions,

6   purchase order, inventory control, requisition self-service,

7   and procurement Punchout.

8   Q   Are those the modules we were discussing yesterday, sir?

9   A   Very same.

10   Q   Should have gone back to the cover page of Plaintiff's

11   Exhibit Number 216, and this is identified as a Lawson

12   professional services statement of work. Do you see that?

13   A   I do.

14   Q   I think you touched upon that a little bit yesterday, but

15   can you refresh us on what a statement of work is?

16   A   So after a company like Jackson Health System writes an

17   RFP and gets a response and decides to award a contract, the

18   statement of work is the specific items of work that are going

19   to be accomplished as a part of the contract. So it's the

20   agreement on what work will be done.

21   Q   Why don't we turn to page Bates label 374 of this document

22   which is page 15. What does it indicate here under section

23   3.5, data migration and conversions?

24   A   So this is going to describe what scope of work is

25   involved, and that is what, by contract, is going to be done in

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1   order to convert data from an old system to the new Lawson

2   system.

3   Q   Now, sir, if you'll turn the page here, there's a table

4   that has responsibilities for master file and configuration

5   table value builds, and there are headings for activity,

6   responsible, key assumptions, and descriptions.

7   Focusing right now on activities and responsibilities,

8   what significance would you like to identify in this particular

9   exhibit?

10   A   So in those first two columns, the data migration workshop

11   is a Lawson responsibility. The migration of strategy and

12   process description is the responsibility of Lawson. Down

13   toward the bottom, training and data migration tools is a

14   Lawson responsibility. Test load and sample data is a Lawson

15   responsibility, and there's more on the next page.

16   Q   Let's go to the next page then.

17   A   Okay. So on this next page, production data load is a

18   Lawson responsibility. Full migration systems test is a

19   Lawson responsibility. Full migration full scale test is a Lawson

20   responsibility, and the live migration is a Lawson

21   responsibility.

22   Q   It does indicate here there are some tasks that are

23   customer responsibilities; is that right?

24   A   Yes, it does.

25   Q   Does Lawson provide instructions to the customers for how

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1   A   I do.

2   Q   Let's turn to the next page. These are, again, activities

3   and responsibilities for particular tasks that need to be

4   accomplished in order to perform this statement of work for the

5   Deaconess Health System; is that right?

6   A   That's right.

7   Q   What, of significance, would you like to point out here?

8   A   So at the top, data migration workshops are a Lawson

9   responsibility, and the description over on the right says that

10 the workshops will define the data migration process and the

11 mapping required.

12   And then two down from that, the task or the activity is

13 transform data. That's a Lawson responsibility, and a

14 description is that the legacy data is transformed into the new

15 database structure. And there at the bottom of the page is

16 live migration. That's a Lawson task, and the description is

17 live data migration.

18   So that's taking the real production data in the

19 non-Lawson system and legacy system and moving that into the

20 Lawson system to make a production system, one that's up and

21 running.

22 Q   So when you say production system, you've now taken the

23 old data, including catalog data, migrated over to the new item

24 master in the Lawson system, and then assisted the customer in

25 getting that up and functional?

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1   A   Yes, to make it fully operational.

2   Q   Can we go to page ten of the document. Again, there's a

3   number of what are called interface activities; do you see that

4   on the chart blow there?

5   A   Yes, I do.

6   Q   What, if anything, does this have for significance for

7   your opinions?

8   A   So these are the activities that are going to be necessary

9   to integrate the system. By integrate, we mean integrate the

10 procurement suite with the financial and accounting information

11 or with the financial and accounting software that's part of

12 the Lawson system.

13   So focusing on the activities that are of relevance to us,

14 in the fourth line we have, technical design doc,

15 documentation. That's the responsibility of Lawson. Two below

16 that, the activity is develop, and the description or -- excuse

17 me -- yeah, it is the description over on the right-hand

18 column. Lawson will develop the interfaces defined in the

19 scope. Blow that unit test, and below that deliver. Both the

20 unit test and deliver are Lawson responsibilities.

21 Q   Doctor, that's all I have with respect to that document.

22 So I'd like to talk to you briefly about this procurement

23 Punchout application and who performs the installation and

24 implementation of that module. Are you familiar with that,

25 sir?

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1   A   I am.

2   Q   I want to direct you to binder one. So my first question

3   is, who typically performs that installation and implementation

4   of a system that utilizes the procurement Punchout?

5   A   That would be Lawson.

6   Q   Did you review any Lawson testimony with respect to that?

7   A   Yes, I did. The Lawson witnesses said that it was very

8   common for the Lawson personnel to implement the procurement

9   Punchout system.

10 Q   Have you reviewed any documents that would confirm that?

11 A   Yes, I have.

12 Q   Why don't you take a look at Plaintiff's Exhibit

13 Number 103. Have you seen this document before?

14 A   Yes, I have.

15 Q   And what is it?

16 A   So this is a list of frequently asked questions -- that's

17 the FAQ -- with regard to procurement Punchout, and this was

18 written by a Lawson employee.

19 Q   And can you turn to page -- let me -- prefatory question.

20 So a Lawson employee is putting together a document that

21 proposes frequently asked questions during this procurement

22 Punchout functionality you described?

23 A   The idea here is Lawson knows what questions are

24 frequently asked, so they prepare a list of questions and

25 answers so that they can easily disseminate answers to

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1   frequently asked questions.

2   Q   Why don't you turn to page six of this document. So the

3   questions that are being formed here are by Lawson that they

4   feel are typical or that are frequently asked by their

5   customers?

6   A   That's right.

7   Q   What is the question Lawson identifies is frequently asked

8   at the top of page six?

9   A   The top question is, who typically performs the

10 installation, and the answer is Lawson Professional Services.

11 Q   Thank you, sir. That's all I have with respect to that

12 document.

13   Doctor, you had another demonstration that you wanted to

14 show, and in this demonstration, is this the demonstration in

15 which we were able to, with the assistance of a Lawson

16 employee, load additional item data to be able to show fuller,

17 more robust functionality?

18 A   Yes, it is.

19 Q   This is Plaintiff's Exhibit Number 380, and the hard copy

20 screen shots would be Plaintiff's Exhibit Number 379. So would

21 you please explain to the jury what's going on in this capture

22 of a process operating on the Lawson demonstration system?

23 A   Sure. We'll just play this, and I'll narrate it as we go.

24 Q   If you need to stop at any appropriate point, fine. If

25 you want to skip over some of the things that are not at issue

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1   in the case, like the approval process or work process flow,
2   that's fine.
3   A   Okay. All right, Mike, let's begin. We launch the
4   browser and go to the portal. We've seen the login before.
5   We're at the home page, and we'll go to requisition
6   self-service and choose shopping. Find/shop tab, and from that
7   drop-down menu we choose the categories. You saw these
8   high-level segment categories before.
9   Stop. This time, you will notice there are more of them,
10   and that's because additional data was loaded in this version
11   of the demonstration.
12   Okay, in the middle of that list is lighting and
13   electrical accessories and supplies, so I'll scroll down the
14   list and go back and choose that high level segment category.
15   Continue.
16   So here's our second level, lamps and light bulbs; our
17   third level, lamps; and our fourth level, which is the
18   commodity, that is halogen lamps. So stop. So now we have a
19   list of all the items in the database that are halogen lamps.
20   Continue.
21   We scroll through the list, choose one, and this is a
22   lamp -- stop. This is a lamp. So that we can remember what it
23   is, it's a 120-watt halogen lamp, and it's available from the
24   vendor ^ Granger. Continue. Add that to my shopping cart. Go
25   back. Scroll through the list, choose another lamp, drill down

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1   on that, stop.
2   And so that we can tell the difference, this one is a
3   150-watt lamp. So I've done some comparison shopping here. I
4   have searched by categories. I found a number of lamps which
5   are generally equivalent. I chose one, a 120-watt one, and now
6   I change my mind, and I'm going to choose the 150-watt lamp.
7   Notice that this is available from a different vendor.
8   This one is from ^ Gexpro. Continue. So I add it to my
9   shopping cart. There it is at the top, and I delete the
10   120-watt lamp at the bottom of the shopping cart.
11   So I'll go back to the drop-down menu, and now I'll do
12   Punchout. I'll punch out to Dell.
13   Q   Let me just stop you there. You went to an internal
14   catalog database?
15   A   The first halogen lamps that we saw were all in the
16   internal database.
17   Q   And now you're going to an external catalog database?
18   A   This is the external catalog at the special Dell site.
19   Q   So the Lawson system has the ability to both search the
20   internal catalog database and add items to a requisition, and
21   then it can also, in the same process, punch out and go to an
22   external catalog database in order to search a catalog and
23   retrieve items?
24   A   That's right.
25   Q   Is that what you are illustrating?

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1   A   That's what we're illustrating here. Okay, so continue.
2   So we punch out to Dell, go full screen and shop by brand. So
3   at the Dell site, we'll see a list of brands, of products that
4   they carry, and it's a long list.
5   We'll just quickly scroll through some of it, and we'll
6   shop by Kensington brand. So here are some Kensington
7   products. I'll look for carrying cases. So I want a case for
8   my laptop. I'll scroll through these, look at a second page,
9   choose this one, a counterbalance laptop roller. Stop.
10   Q   Let me ask you this, Dr. Weaver, while you stopped: Are
11   we actually at the Dell commercially available website?
12   A   No. This is the special Dell site that's been created for
13   this customer.
14   THE COURT: Dell or Kensington?
15   THE WITNESS: Dell is the site, and Kensington is the
16   brand of carrying case that Dell is selling.
17   THE COURT: Dell sells Dell and others including
18   Kensington, and they are on this site.
19   THE WITNESS: Dell sells, of course, many items and
20   many brands, but they are all on the Dell site, yes.
21   Q   How do we know that this is the Dell site? I see it also
22   has the Lawson logo at the top. What are we seeing here that
23   tells us we're not at the Dell commercially available site but
24   rather some site that Lawson is making available to the
25   customer?

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1   A   When we look at that URL, universal resource locator web
2   address at the top, we start at the
3   lsfserver.corpnet.lawson.com.
4   Q   LSF, does that stand for Lawson System Foundation server?
5   A   Yes, it does.
6   Q   That's the foundational software that's necessary to have
7   this S3 procurement software run on top of?
8   A   Right. That was the bottom yellow block in my
9   demonstrative. Then as we look to the right of that, we see
10   we're being redirected to this special website which is
11   signin.dell.com/dellogin/port. I'm sorry, that was portal,
12   /login.ASPX. So this is running software that loads this Dell
13   site.
14   So we have now gone to the Kensington counterbalance
15   laptop roller, but in looking at the catalog description, it
16   says, temporarily out of stock, please check back soon. So I
17   need my cases sooner than that, so I'm going to get a different
18   laptop case. So, continue.
19   So I'll go up to rollers. So in the special Dell site,
20   I'm looking at roller cases. Here is one from Case Logic, so I
21   drill down on that. Stop. So now I have the description, I
22   have the manufacturer part number, I have the Dell part number,
23   I have the UNSPSC code that I used, and now that I look at the
24   information on availability, it says usually ships within
25   24 hours. So this case is available in inventory as opposed to

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1   the previous one that was not. So this case is satisfactory,
2   so I'll choose this one. So continue.
3   I'll add it to my Dell shopping cart. So here's that
4   description. I'll change the quantity to three. I'll create
5   the order, and I'll do the trade compliance. Continue. So
6   here we have the verify and submit. So there is my case,
7   quantity three. That's all right, so I'll submit the order.
8   Stop. So now that I've submitted that order, I have
9   checked out of the Dell site, and here in my Lawson shopping
10 cart I have three roller cases and one incandescent halogen
11 lamp. Continue. So I'm going to check out. I guess I'm going
12 to look at the lamp again. Okay.
13   So here is the detail on the lamp, and -- stop. If you
14 will recall, this one came from Gexpro. Continue, and I'll
15 look at the detail on the laptop cases. So there's my rolling
16 laptop case, and this comes from the Punchout site, from Dell
17 computer.
18   All right. So I'm satisfied with this, so I check out,
19 and now this is saving the Lawson shopping cart into temporary
20 storage where I can turn it into a requisition and then into a
21 purchase order. So back to the portal. You've seen the
22 approval before. I find my requisition number 940. There's my
23 halogen lamp and my three roller cases, so I approve that.
24 Then I'll run that PO 100 program.
25   I give it a job description, I fill in this required

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1   information. Don't need the filters. Now we'll submit this
2   job. The job name RQ 940 is running. I go to the print
3   manager, I get the requisition -- the purchase order and --
4   stop.
5   Here at the top of the purchase order we have the
6   information on the buyer, Metropolis Medical Center. Continue.
7   Stop. So here is our roller laptop case, quantity three
8   coming from Dell Computer, purchase order released. Continue.
9   Stop. And so here then is our second item, the incandescent
10 halogen lamp. It's coming from Gexpro, quantity one, PO
11 released, and the report is complete, two purchase orders
12 created. That's the end.
13 Q   Doctor, in this process in which you searched among
14 product catalogs and an internal catalog database, and you went
15 to an external catalog database at the Lawson Punchout partner
16 Dell, at any time, have you left the Lawson system while doing
17 that?
18 A   Never.
19 Q   Now, Doctor, you talked a little bit about the UNSPSC
20 classification coding yesterday for finding items of general
21 equivalents that could be substituted for each other; you are
22 familiar with that?
23 A   Yes.
24 Q   I don't want to go through the whole segment and family
25 and class and commodity code again, but I do want to ask you --

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1   you may have touched on this yesterday, but is there a module
2   that Lawson provides that permits you to -- a program that
3   permits you to automatically upload that UNSPSC classification
4   schema?
5   A   Yes, there is.
6   Q   What inventory module -- excuse me. What module does that
7   come with?
8   A   Inventory control.
9   Q   Is that one of the core modules that you have to have in
10 order to do this procurement process?
11 A   Right. It's one of the three in my blue box.
12 Q   Does Lawson tell the customers where it can obtain these
13 codes?
14 A   Yes. It tells you the website to go to.
15 Q   And does Lawson have a program in that inventory control
16 where you can automatically download those?
17 A   Yes, it does.
18 Q   I'd like you -- well, let me as you this: Have you
19 reviewed documents explaining how these UNSPSC codes work in
20 the procurement process?
21 A   I certainly have.
22 Q   Could I ask you to go to Plaintiff's Exhibit Number 11
23 which is in volume one? Now, at the top of this, there's an
24 organization called Grenada Research; do you see that?
25 A   I do.

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1   Q   Is that associated with Lawson in any way?
2   A   No.
3   Q   So this is some independent third party who is going to
4   tells us about using UNSPSC coding?
5   A   That's right.
6   Q   It's called a white paper. What's a white paper, if you
7   know?
8   A   A white paper is a statement of position, so it's what you
9   know or what you think about a subject. It's intended to
10 educate.
11 Q   Underneath there, there's a -- what does it say as to
12 these UNSPSC codes?
13 A   So the white -- the topic of the white paper is why coding
14 and classifying products is critical to success in electronic
15 commerce.
16 Q   Can you go to page five of this exhibit. There's a
17 heading right in the middle called, for finding and purchasing;
18 do you see that?
19 A   I do.
20 Q   There's a table that says, classifying products and
21 services supports procurement activities; do you see that?
22 A   I do.
23 Q   Do you agree with that statement?
24 A   Yes.
25 Q   And there is a pros and cons. Do you see that?

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1   A   I do.

2   Q   What is one of the pros that Grenada Research identifies

3   here?

4   A   So the first one, enables buyers and employee

5   requisitioners to find all suppliers of a given category.

6   Q   Is there a con?

7   A   Yes. Requires up-front effort to apply codes, can be done

8   by third party.

9   Q   And have you seen -- is this the Lawson that says its

10   customers will provides that service?

11   A   Yes.

12   Q   Underneath that table, there is a heading called product

13   discovery?

14   A   Yes.

15   Q   What, if any, significance does this have to your opinions

16   with respect to how the UNSPSC assists buyers and

17   requisitioners to find suppliers in a given category?

18   A   The first two sentences are relevant. A common naming

19   conventional allows computer systems to automatically list

20   similar products under a single category. When a person is

21   searching for the category, he or she finds precisely the

22   things being discovered and nothing else.

23   Q   Can you turn to page ten of the document which ends with a

24   Bates label 041. And there's a heading called unique item

25   codes for schema modifications and multi-language uses.

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1   A   Yes.

2   Q   And at the end, I don't want to have to go through this

3   entire paragraph -- the jury is going to have this in the jury

4   room -- but what, of significance, in that paragraph would you

5   like to point out?

6   A   In the fourth paragraph, it's the last sentence which

7   says, in effect, unique numbers allow cross-referencing to

8   assure consistency.

9   Q   Is cross-referencing relevant in this case?

10   A   Yes. That's a term in the patent.

11   Q   Is it a term that the Court's described in its glossary of

12   terms?

13   A   Yes, it is.

14   Q   Why don't you go to that if you could for a second. Cross

15   reference table, do you see the Court defined that?

16   A   It's the third one down.

17   Q   It says, the Court's construction is a table that links

18   vendor items determined to be equivalent between two or more

19   different vendors. Do you see that?

20   A   I do.

21   Q   Does this UNSPSC hierarchical schema permit the

22   cross-referencing capability the Judge has defined there?

23   A   Yes, it does.

24   Q   Turn to page 13 of the document for now, and just I want

25   to focus on that hierarchy. Is this -- this has the segment,

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1   the family, the class, and the commodity for office equipment

2   going down to pen refills. Is this the same kind of example

3   you gave yesterday with how, in effect, this eight-digit coding

4   can drill down to get you to a specific product that you want?

5   A   Yes, it is. The example we used yesterday went down to

6   black pens. This was a different class, so it ends up with a

7   different commodity, but it's the same schema.

8   Q   Why don't you go, then, to page 12 on this exhibit, and if

9   we could, just the chart. So, again, this is describing the

10   levels of the UNSPSC -- actually, this even has one additional

11   level down there. Do you see this business function?

12   A   Yes.

13   Q   What does it say by the time you get down to the commodity

14   level, that last level? What does it say with regard to what

15   you can now do with this tool in order to identify product or

16   service? How does it characterize it?

17   A   What it says, by the time you've gotten down to the

18   commodity level, you have found a group of substitutable

19   products or services, and we just saw that with the halogen

20   lamps.

21   Q   Doctor, your opinion, if the parts are substitutable,

22   would they be similar or generally equivalent?

23   A   Yes, they would.

24   Q   Thank you, Doctor. That is all I have with respect to

25   that document.

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1   THE COURT: Is that 111 or 11?

2   MR. ROBERTSON: 11, sir. I may have misspoken.

3   THE COURT: No, I didn't write it down.

4   Q   Doctor, I'd like to talk to you a little bit now about

5   what's known as indirect infringement. You are familiar with

6   that concept?

7   A   Yes.

8   Q   You understand that ePlus is also accusing Lawson of

9   inducing infringement of the patent claims in this case by

10   encouraging, aiding, abetting, or assisting its customers to

11   directly infringe the method claims at issue in this case?

12   A   Yes, I understand that.

13   Q   What evidence have you reviewed with respect to whether or

14   not Lawson does, in fact, encourage, assist, urge, aid, or abet

15   its customers to use the Lawson systems in a manner that are

16   covered by ePlus's claims?

17   A   Well, we saw yesterday that there were training courses

18   that were being offered. We looked at one which was the notes

19   for a training session, but there are live training sessions,

20   there are archived on-line training sessions that you can play

21   back. There are live training sessions that are using an

22   interactive tool so that you can watch a training session and

23   participate in it.

24   We know from testimony of both the Lawson witnesses and

25   their customers that Lawson provides consulting services to

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1   help with things like the data migration that we talked about
2   moments ago. Lawson maintains a help website where customers
3   can go to find documents or to get answers to frequently asked
4   questions.
5   We know that Lawson has partnerships with some companies
6   that provide multiple vendor catalogs. One of those is the
7   Global Health Exchange. So this helps their customers find
8   more items that they might want to purchase, and then as you've
9   seen already, there's voluminous documentation that Lawson
10 provided to its customers about how to use its software
11 products.
12 Q   Will they install, build, configure, maintain, and service
13 those systems?
14 A   They will.
15 Q   Does Lawson provide on-demand online courses?
16 A   Yes, they do.
17 Q   Will they perform product simulation training for you?
18 A   Yes, they will.
19 Q   Do they have interactive webcast training?
20 A   Yes, they do.
21 Q   Do they provide virtual labs where students can interact
22 with a simulation system?
23 A   Yes, they do.
24 Q   Do they offer courses in how to do the electronic
25 procurement?

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1   A   They do.
2   Q   Do they provide manuals and guides to the customers to
3   train them how to set up the S3 item master and add item data?
4   A   Yes.
5   Q   Do we see something about, or are you familiar with
6   courses explaining how to import vendor agreements?
7   A   Yes, we saw that.
8   Q   Do they have a website you can go to if you have any
9   questions?
10 A   Yes, a help website.
11 Q   Do they provide answers to frequently asked questions of
12 their customers?
13 A   They do. We saw one.
14 Q   Are you aware of any kind of technical support tools that
15 Lawson provides to its customers?
16 A   Yes.
17 Q   Are you familiar with a case management and problem
18 management tool?
19 A   Yes.
20 Q   What kind of technical support do they provide, if you're
21 aware?
22 A   If the customer wants them to assist with creating a new
23 system, which most customers do, we saw that in the frequently
24 answered questions, then Lawson support personnel will go to
25 the customer site and help them convert from an old system to a

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1   new system or just install a new system.
2   So they'll do whatever the customer needs to get a new
3   system up and running. And Lawson will even host the entire
4   system for the customer, that is provide the hardware and
5   software and then train the customers about how to use the
6   Lawson system even if it's running at the Lawson site.
7   Q   So when you say host the system, that is the customer
8   doesn't have to actually have the software implemented on its
9   computer servers; Lawson will have it loaded there, and the
10 customer can go to the Lawson system and use it?
11 A   That's right. Yeah. The customer doesn't have to
12 actually have any of the hardware or software. All of that can
13 be run from Lawson-owned and managed and maintained computers.
14 Q   So when Lawson is hosting that software, is it performing
15 the method claims that are at issue?
16 A   Yes, it is.
17 Q   Doctor, when Lawson sells a system that has those core
18 procurement modules you identified, inventory control,
19 requisitions, and purchase order, and the prerequisite modules
20 you identified being the Lawson System Foundation and process
21 flow -- can you put up those two -- yellow and blue box, and
22 there are at least two vendor catalogs either loaded, or
23 through the Punchout system available in the databases, does
24 that system have any substantial non-infringing use?
25 A   No. The suite is intended for one purpose, and that's to

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1   do the kind of procurement that we've been discussing now for
2   more than a day.
3   Q   And then when Lawson sells a system that has each of these
4   foundation and these three core modules that make up an
5   infringing system, plus the requisition self-service
6   application on top of that which makes it more user-friendly as
7   I think you identified --
8   A   Right.
9   Q   -- and there are loaded at least two vendor catalogs,
10 either external or combined with an internal -- let me rephrase
11 that. Let me start over.
12   When you have this requisition self-service loaded on top
13 of these core modules to make it more user-friendly, and when
14 you have available to you either at least two internal catalogs
15 or an internal catalog and at least one external catalog that
16 can be accessed, does that system have any substantial
17 non-infringing use?
18 A   No.
19 Q   We have those three core procurement modules, the
20 requisition self-service and the Punchout procurement
21 application, and available to us at least two product catalogs,
22 does that system have any substantial non-infringing use?
23 A   No.
24 Q   If you would just again for me, I'd like to just confirm
25 the three different scenarios that you have given opinions on

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1   with respect to what forms an infringing system.

2   A   All right.

3   Q   Maybe you want to identify them by circling or whatever on

4   the touch screen.

5   A   Okay.

6   Q   So --

7   A   Waiting on me, okay.

8   Q   What is the first core infringing system?

9   A   That was this one, the three, S3 procurement modules,

10   purchase order requisitions, and inventory control running on

11   top of the Lawson system foundation and process flow. The

12   second one was to add requisition self-service.

13   So that was the user-friendly overlay on top of the

14   requisition module itself, and the third one here was

15   procurement Punchout. Your Honor, I see what you mean about

16   the Ps. The.

17   THE COURT: Not all of them, though. I'm sorry, but

18   I have asked to see if they can do something about it, but I

19   think it will only help the next case, not us. It's nothing

20   you're doing wrong. Just one of those things that happens.

21   THE WITNESS: That's curious. So the third one is to

22   add the procurement Punchout which is how you get access to

23   those external sites like Dell and Staples.

24   Q   When I add the electronic interchange on top of that, is

25   that still an infringing configuration?

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1   A   It is, because even if we have just this much, we have the

2   requisitions module that can talk to EDI to do the purchase

3   orders and to get the purchase order acknowledgements.

4   Q   Just so we're clear, can you remove the Punchout? Now,

5   this is an infringing configuration. Does it become

6   non-infringing by adding those additional modules?

7   A   It does not.

8   Q   So, Doctor, I'd like to talk to you now about your

9   ultimate opinions with respect to infringement in this case.

10   Are you prepared to do that?

11   A   Sure.

12   Q   First I'd like to start with claim three of the '683

13   patent. You are aware, Doctor, and understand that ePlus is

14   accusing Lawson of directly infringing claim three by making,

15   using, selling, and offering to sell or importing systems that

16   directly infringe this claim?

17   A   Yes.

18   Q   Do you have an opinion as to whether or not Lawson

19   directly infringes this claim by doing all those things and

20   offering a system that's capable of including at least two

21   product catalogs containing data relating to items associated

22   with their respective sources?

23   A   Yes, I believe they do.

24   Q   Have we seen examples of multiple product catalogs that

25   can be imported into a system database or accessed via Punchout

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1   and that Lawson software includes various catalog import

2   utilities?

3   A   Yes. We saw that in my most recent demonstration where we

4   had multiple vendor catalogs for the lamps, and then we did the

5   Punchout, and we had access to Dell and Staples.

6   Q   The first introductory preamble here says that claim three

7   has to be an electronic sourcing system. Do you see that?

8   A   Yes.

9   Q   Do you know whether the Judge has construed the term

10   electronic sourcing system?

11   A   Yes.

12   Q   What has the Judge indicated an electronic sourcing system

13   is?

14   A   An electronic system for use by a prospective buyer to

15   locate and find items to purchase from sources, suppliers, or

16   vendors.

17   Q   Do you have an opinion as to whether or not the accused

18   Lawson system here satisfies that claim element?

19   A   It does.

20   Q   The next element is at least two product catalogs

21   containing -- I'm sorry. You probably already did that one.

22   Did you satisfy -- did Lawson satisfy direct infringement for

23   this electronic sourcing system, and you said yes.

24   A   Yes.

25   Q   Does Lawson provide to its customers an electronic

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1   sourcing system in your opinion?

2   A   Yes.

3   Q   And I think you've already answered the question with

4   respect to that Lawson provides or permits access to and

5   provides services that provide at least two product catalogs

6   containing data relating to items associated with their

7   respective sources; is that right?

8   A   That's right --

9   MR. McDONALD: Object to the form of that question,

10   Your Honor.

11   MR. ROBERTSON: I'll rephrase.

12   Q   Does Lawson directly infringe the second claim element?

13   A   Yes.

14   Q   Satisfies it when -- does it satisfy it?

15   A   Yes.

16   Q   Okay. And do they assist, aid, abet, or encourage or urge

17   their customers to do the same?

18   A   Sure, when they license these software modules.

19   Q   Do you have an opinion as to whether or not Lawson's

20   systems, the accused systems provide a means for selecting the

21   product catalogs to search?

22   A   They do.

23   Q   And what evidence have we seen for that?

24   A   We know that there is a user interface that allows the

25   user to either select one catalog and then serially to select

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1 they use the system with that capability?

2 A   Yes.

3 Q   Go to claim 29. This is a dependent claim; correct,

4 Doctor?

5 A   Yes, it is.

6 Q   So this dependent claim has to have all the steps that you

7 just indicated were present in claim 28 plus the additional

8 step of determining whether selective matching items available

9 in inventory; do you see that?

10 A   I do.

11 Q   What is your opinion with respect to direct infringement

12 and indirect infringement as to this dependent claim 29?

13 A   I believe that Lawson is a direct infringer and an

14 indirect infringer. We just saw with claim 28 that we went all

15 the way through the converting process, and in the demo that I

16 just showed you, we did both the conversion with the UNSPSC

17 codes, and then we did the determination of whether or not it

18 was available in inventory when we did the laptop roller cases.

19 Q   And by providing this capability to its customers, is

20 Lawson encouraging aiding, abetting, or assisting them in

21 performing this step?

22 A   Yes.

23 Q   Let's go to claim one of the '172, if we can, please.

24 That's also an electronic sourcing system.

25   THE COURT: That's tab four in your books, ladies and

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1 gentlemen.

2 Q   Now, this also starts out with a preamble, an electronic

3 sourcing system comprising; do you see that?

4 A   Yes.

5 Q   Did you apply the same definition that the Court gave for

6 that?

7 A   I did.

8 Q   Both for direct and indirect infringement?

9 A   Yes.

10 Q   This is a system claim, so this involves the system or the

11 product we're talking about here; is that right?

12 A   That's right.

13 Q   By providing a system capable of performing all of the

14 structures disclosed here, do you have an opinion, first, as to

15 whether or not Lawson provides a database containing data

16 relating to items associated with at least two vendors

17 maintained so that selected portions of the database may be

18 searched separately?

19   MR. McDONALD: Object to the form of the question,

20 Your Honor. He said something about capable of performing some

21 structures or something. I think it's ambiguous as to what

22 that means.

23   THE COURT: I don't see structures in there.

24   MR. ROBERTSON: I will rephrase the question, Your

25 Honor.

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1 Q   Does the Lawson system, as -- is the Lawson system capable

2 of providing a database containing data relating to items

3 associated with at least two vendors maintained so that

4 selected portions of the database may be searched separately?

5   MR. McDONALD: I object to the form of the question,

6 Your Honor. The element doesn't say capable of. It says a

7 database.

8   THE COURT: He's objected to the form of the

9 question.

10   MR. ROBERTSON: The law is, Your Honor, all they have

11 to do is provide a system that's capable of doing that. So I

12 think the objection is not well-taken.

13   THE COURT: Anything else?

14   MR. McDONALD: There's a distinction I'm making

15 between the database versus function. Capable of performing a

16 function is one thing. Having a database is another.

17   THE COURT: I think they're two different questions.

18 I think the first question is, does it have a database. If it

19 doesn't, then you have to say something else. Your objection

20 is sustained to the form of the question.

21 Q   Does the Lawson system have a database containing data

22 relating to items associated with at least two vendors

23 maintained so that selected portions of the database maybe

24 searched separately?

25 A   Yes. We saw the database in the item master and the

792

1 vendor item table, and selecting portions of the database to be

2 searched separately was done by the search index.

3 Q   Have we seen examples where Lawson has implemented

4 scenarios in which they have provided vendor data for their

5 customers?

6 A   Yes.

7 Q   Have we seen examples where they do what you identified as

8 data migration of the customer's catalog data to the new Lawson

9 system?

10 A   We saw that in the statement of work.

11 Q   Is the Lawson system capable of containing data relating

12 to items associated with at least two vendors maintained so

13 that selected portions of the database may be searched

14 separately?

15 A   Yes.

16 Q   Did Lawson assist, aid, abet, or encourage its customers

17 to maintain a database that would satisfy the first claim

18 element?

19 A   Yes.

20 Q   These next five elements are means-plus-function claim

21 elements. You are familiar with that?

22 A   I am.

23 Q   The Court's construed these claim elements. You've

24 reviewed those constructions; is that right?

25 A   Yes.

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1 let's go through direct infringement first and identify which
2 system infringes which claim.
3 A   Okay.
4 Q   And in each of these system configurations, do you have an
5 opinion as to whether or not all five satisfy the preamble that
6 they are electronic sourcing systems as defined by the Judge?
7 A   Yes, all five.
8 Q   In each of these configurations, does Lawson provide an
9 accused system, all five system that's capable of having at
10 least two product catalogs containing data related to items and
11 items associated with respect to sources?
12 A   Yes.
13 Q   In each of these scenarios, does all five systems, do they
14 provide the means for selecting a product catalog to search?
15 A   Yes.
16 Q   In each of these systems, do they provide means for
17 searching for matching items among the selected product
18 catalogs?
19 A   Yes.
20 Q   In each of these systems, have we seen evidence that shows
21 that they have the means for building a requisition using data
22 relating to selected matching item and their associated
23 sources?
24 A   Yes.
25 Q   In each of these five system that we've identified, does

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1 it have the means for processing the requisition to generate
2 one or more purchase orders for the selected matching items?
3 A   Yes.
4 Q   Which of the five systems have we seen have the ability
5 for converting data relating to a selected matching item and
6 associated source to data relating to an item and a different
7 source?
8 A   The ones that contain the requisition self-service module.
9 Q   So if it had the requisition self-service module, that
10 would be able to satisfy this last claim element?
11 A   Yes.
12 Q   So that would be system, two, three, four, and five as we
13 defined them; is that right?
14 A   That's what my diagram says, yes.
15 Q   For each of these elements, does Lawson encourage, aid,
16 abet, or assist their customers to satisfy them?
17 A   Yes.
18 Q   These two product catalogs, have we seen instances where
19 Lawson will make catalogs available, multiple catalogs
20 available to their customers either through external, Punchout
21 catalogs, or internal catalog databases?
22 A   Yes, we have.
23 Q   Let's go to claim 26 if we can. Let's do that. If we can
24 put claim 26 next to claim 28, put those side by side. They're
25 a little difficult to read, but can you confirm for me, Doctor,

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1 that both of these are method claims?
2 A   That's correct.
3 Q   And both of these have -- the first five elements are
4 identical?
5 A   They are.
6 Q   Now, earlier you said the direct infringement, I
7 understood your opinion to be, would be by the customers
8 performing the steps of this method claim as well as Lawson
9 when it hosts a system that can perform the steps of these
10 claims; is that right?
11 A   That's correct.
12 Q   So do you have an opinion as to whether or not customers
13 can perform the step of maintaining at least two product
14 catalogs on a database containing data relating to items
15 associated with the respective sources?
16 A   Yes, all of the systems do that.
17 Q   Okay, all five?
18 A   All five.
19 Q   Now, the same for claim 28, do you have an opinion as to
20 whether or not customers, using all five of the systems as they
21 are configured and defined, can select or -- can perform the
22 steps of selecting product catalogs to search?
23 A   Yes, they can.
24 Q   Now, that would be the same for both claim 26 and 28?
25 A   Yes, it's the same.

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1 Q   All right. The next step in these method claims is
2 searching for matching items among the selected product
3 catalogs. Do you see that?
4 A   I do.
5 Q   That's for both claim 26 and claim 28?
6 A   Correct.
7 Q   We see the ability to search for matching items among the
8 selected product catalogs in evidence you offered?
9 A   Yes. We saw it in the demonstrations.
10 Q   Did we see it in documentation?
11 A   Certainly.
12 Q   That would be for both claims?
13 A   For both claims.
14 Q   Does all five of the accused Lawson systems have the
15 ability to, capability of building a requisition using data
16 relating to selected matching items and their associated
17 sources?
18 A   Yes.
19 Q   Can the customers perform that step with all five
20 configurations that we've defined?
21 A   Yes.
22 Q   The next step is processing requisition to generate one or
23 more purchase orders for the selected matching items. Did we
24 see that that step could be performed in the demonstrations?
25 A   We saw it in the demonstrations.

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1   Q   Can that be performed for all five of their configurations

2   as we've defined them?

3   A   Yes, it can.

4   Q   Is there indirect infringement of that as well?

5   A   Yes.

6   Q   That would be for both claim 26 and claim 28?

7   A   Correct.

8   Q   Is that because the step there --

9   A   Because it's identical.

10   Q   Now, the next and last step in claim 26 is determining

11   whether a selected matching item is available in inventory.

12   Which of the five configurations of these accused Lawson

13   systems has the capability of performing that step?

14   A   It's, it would be the system that we called system three

15   which was Punchout, requisition self-service, the procurement

16   modules, and the platform; system four, which was the EDI

17   module on top of the procurement system on top of the platform;

18   and system five, which had Punchout, requisition self-service,

19   electronic data interchange, the procurement modules, and the

20   platform.

21   Q   Do you have an opinion as to whether or not Lawson

22   indirectly infringes that claim as well?

23   A   Yes, I believe they do.

24   Q   How do they do that?

25   A   By providing those training courses, that assistance,

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1   of the elements of the method claim of claim 28 in order to

2   infringe claim 29; is that right?

3   A   Right.

4   Q   So you have to be able to perform that converting-data

5   step to find items associated with one source and items

6   associated with another source; correct?

7   A   Right.

8   Q   Then to infringe this claim, you'd also be able to have to

9   take that system and have a step of determining whether a

10   selected matching item is available in inventory; is that

11   correct?

12   A   Correct.

13   Q   Which of the systems, as we've identified them, would

14   infringe or directly infringe claim 29?

15   A   Three and five.

16   Q   Why is that?

17   A   Because they contain the Punchout module that lets us

18   check inventory externally, the requisition self-service that

19   allows us to do the conversion using those UNSPSC codes, and

20   system five also had the EDI module which was the purchase

21   order and purchase order acknowledgment exchange.

22   Q   And does Lawson indirectly infringe claim 29 by assisting,

23   aiding, abetting, encouraging its customers to perform this

24   method step?

25   A   Yes.

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1   those manuals, online training, professional services.

2   Q   The last element of claim 28, is this converting-data

3   element that had to do with the ability to find a selected

4   matching item and an associated source and relating it to data

5   relating to an item in a different source; do you see that?

6   A   I do.

7   Q   What systems, in your opinion, satisfy that claim element?

8   A   The ones containing the requisition self-service module

9   which would be two, three, and five.

10   Q   Does four have a requisition self-service module?

11   A   No.

12   THE COURT: Four is core plus EDI.

13   MR. ROBERTSON: I apologize.

14   Q   All right. Do you have an opinion as to whether or not

15   they indirectly infringe claim 28 in the same manner they

16   infringe claim 26?

17   A   Yes.

18   THE COURT: And is the answer that they do or they

19   don't?

20   THE WITNESS: The answer is that they do.

21   MR. ROBERTSON: Thank you, Your Honor.

22   Q   Claim 29, this was that dependent claim that depends from

23   claim 28; correct?

24   A   Correct.

25   Q   So in order to infringe claim 29, you have to satisfy all

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1   Q   And do they also indirectly -- actually, strike that. I

2   think we're done with claim 29. Why don't we go to claim one

3   of the '172 patent. Again, this is an electronic sourcing

4   system. Do you see that?

5   A   Yes.

6   Q   Now, it also uses the term comprising as all these claims

7   have used. Would you just refresh the jury as to what your

8   understanding is of the term comprising?

9   A   Comprising means including but not limited to.

10   Q   So we're going to have to have all of these elements, but

11   we could have additional elements, and that would make it

12   non-infringing; is that right? All the elements here are

13   satisfied?

14   A   Correct.

15   Q   So, for example, in your demonstrations, there was some

16   steps in which you had to seek certain approvals from managers

17   or technical people in order to be able to complete the

18   requisition and purchase order process?

19   A   Right, but that's irrelevant to this claim.

20   THE COURT: Your opinion, they infringe all five

21   systems or infringement -- if there's infringement, the mere

22   fact that there is the process of going to the managers, et

23   cetera, doesn't change the fact that they infringe if you

24   conclude there's infringement, and that is the way --

25   THE WITNESS: Yes, it is.

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1   containing data relating to items associated with at
2   least two vendors maintained so that selected portions
3   of the database may be searched separately?
4   A Yes, they do.
5   Q And in your opinion by the acts that we have
6   described does Lawson satisfy that element for
7   indirect infringement?
8   A Yes.
9   Q Do configurations 2, 3 and 5 have means for
10 entering product information that at least partially
11 describes at least one desired item?
12 A Yes, 2, 3 and 5, they do.
13 Q Do 2, 3 and 5 satisfy the element of means for
14 searching for matching items that matched the entered
15 product information in the selected portions of the
16 database?
17 A They do.
18 Q How did we see that?
19 A Because of the user interface that we saw in the
20 requisition self service.
21 Q And we saw that in your demonstrations?
22 A Sure, we did.
23 Q Do configurations 2, 3 and 5 have means for
24 generating an order list that includes at least one
25 matching item selected by said means for searching?

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1   these remaining elements are indirectly infringed by
2   Lawson by providing those services?
3   A My opinion is that they do.
4   Q Why don't we go to the claims of the '516 patent.
5   And that's behind tab 3 in the jurors' notebook. The
6   first claim we're going to talk about there is Claim
7   One. And, again, the preamble says it's an electronic
8   sourcing system. Do you see that?
9   A Yes.
10 Q And the Court has defined that. It's the same for
11 Claim One, for example, of the '172 patent. Is it
12 your opinion that all five configurations that are
13 accused here are electronic sourcing systems as the
14 Court has defined them?
15 A Yes.
16 Q This electronic sourcing system also comprises a
17 collection of catalogs of items stored in electronic
18 format. Do all five configurations, as we have
19 defined them, satisfy that claim element?
20 A Right, all five contain multiple internal
21 catalogs, and when you add Punchout, you can add
22 external catalogs as well.
23 Q Do all five configurations of these accused Lawson
24 systems as we've defined them satisfy the claim
25 element of having a first set of predetermined

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1   A They do.
2   Q Is it that RSS module that provides that order
3   list or shopping cart as you referred to it?
4   A Yes, the RSS is where the shopping cart
5   functionality resides.
6   Q Do configurations 2, 3 and 5 of the accused Lawson
7   systems have a means for building a requisition that
8   uses data obtained from said database related to
9   selected matching items on said order list?
10 A They do.
11 Q Do configurations 2, 3 and 5 have a means for
12 processing said requisition to generate purchase
13 orders for said selected matching items?
14 A They do. We saw that in the demo.
15 Q The searching that's the subject of the means for
16 searching which permits you to search a database,
17 selected portions of a database, what evidence did we
18 see that that was present?
19 A That was the search index that selected only --
20 that searched only selected portions of the database.
21 Q Now, if Lawson provides such an electronic
22 sourcing system to its customers and assists them in
23 implementation, maintenance, servicing and all the
24 training materials, guides, manuals, online services,
25 etc., do you have an opinion as to whether or not all

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1   criteria associated with said collection of catalogs?
2   A Yes, they do.
3   Q What evidence do we see for that?
4   A We saw in my demonstration that you could enter an
5   item number, or vendor item, manufacturer number. You
6   have a text box in the user interface that allowed
7   that.
8   Q Do all five configurations of the accused Lawson
9   systems as we've defined them have a second set of
10 predetermined criteria associated with items from each
11 of said catalogs?
12 A Yes, they do.
13 Q How do they do that?
14 A Again, that's the text box.
15 Q Do all five configurations have a catalog
16 selection protocol, said catalog selection protocol
17 relying on said first set of predetermined criteria to
18 select less than said entire collection of catalogs,
19 including a matching vendor identification code with a
20 subset of said collection of catalogs wherein said
21 subset of catalogs includes both a vendor catalog from
22 a predetermined vendor and a second catalog from a
23 predetermined third party that's one of a manufacturer
24 and a competing vendor, said predetermined third party
25 selling items corresponding to items in said vendor

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1   catalog?

2   A   That's a mouthful, isn't it? The answer is yes.

3   And we saw that yesterday when I did the demonstration

4   where I first searched for Dell and got back items

5   that included Dell as one of these keywords. So that

6   was my first predetermined criteria.

7   And then I added a second predetermined criteria,

8   the Dimension 8100, and that narrowed the search down

9   to just two items, but they were from different

10 vendors, Dell and Diablo. So one of them was a

11 competing vendor. Dell is a manufacturer. Dell is a

12 competing vendor.

13   So, yes, we've seen evidence that these systems

14 that we're talking about directly infringe the fourth

15 element of Claim One.

16 Q   The last element of Claim One of the '516 patent

17 is a search program. Said search program relying on

18 said second set of criteria to select specific items

19 from said catalogs determined from said catalog

20 selection protocol. Did I read that correctly?

21 A   I think so. Again, we saw that yesterday in the

22 demonstration where Dimension 8100 was the second set

23 of predetermined criteria.

24 Q   Did you use that second set of predetermined

25 criteria to conduct the search?

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1   A   Yes, I did.

2   Q   So do all five configurations of the accused

3   systems as we've defined them satisfy all of the

4   elements of Claim One of the '516 patent?

5   A   Yes, they do.

6   Q   If Lawson offers all five of those configurations,

7   manufacturers, sells or imports, do they directly

8   infringe this claim?

9   A   Yes, they would.

10 Q   And in the same manner, if they provide such a

11 system to their customers and then induce them to use

12 that system by the evidence that you've offered of

13 assisting, aiding, abetting, encouraging, etc.,

14 through all the various services and implementation

15 and educational services they provide, what is your

16 opinion with respect to whether or not Lawson

17 indirectly infringes Claim One?

18 A   I believe they do.

19 Q   So they would satisfy all of the elements if they

20 provided a system that had this capability and then

21 performed those acts that would constitute inducement?

22 A   Yes.

23 Q   Let's look at Claim Two of the '516 patent, which

24 is a dependent claim. Do you understand that?

25 A   Sure. It depends from Claim One.

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1   Q   So we have to satisfy all the elements of Claim

2   One, which you just indicated for all five

3   configurations is infringing.

4   Claim Two talks about having catalogs stored in

5   separate databases. Do you see that?

6   A   I do.

7   Q   How would the configurations as we've defined them

8   satisfy this separate database requirement?

9   A   These would be external databases that are

10 accessible through the Punchout module.

11 Q   Could they be a Punchout external plus Lawson

12 internal catalogs?

13 A   Of course.

14 Q   So if it requires Punchout, only configurations 3

15 and 5, as we've defined them, have Punchout; is that

16 right?

17 A   That's my diagram, yes.

18 Q   So your opinions with respect to Claim Two, I'd

19 like you to confine them to just configurations 3 and

20 5 that have the Punchout application. Okay?

21 A   Right.

22 Q   Does Lawson configurations 3 and 5 satisfy the

23 claim cited in Claim Two of an electronic sourcing

24 system as recited in Claim One wherein catalogs

25 comprised of said collection of catalogs are stored in

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1   separate databases?

2   A   Yes, we saw that in the Punchout to Dell and

3   Staples.

4   Q   Do they indirectly infringe in the same manner

5   that you have been describing?

6   A   Yes.

7   Q   Let's go to Claim Six if we can. Again, Claim Six

8   is a dependent claim that depends on Claim One. So

9   all the elements of Claim One need to be satisfied,

10 and you have already rendered an opinion that that is

11 present.

12   Claim Six recites an electronic sourcing system as

13 recited in Claim One where it said second set of a

14 predetermined criteria includes at least one of a

15 catalog number and an item textual information. Do

16 you see that?

17 A   I do.

18 Q   Do configurations 3 and 5 including -- excuse me.

19 Let me step back. What configurations satisfy Claim

20 Six that has at least one of the catalogs -- excuse

21 me -- wherein said set of predetermined criteria

22 includes at least one of the catalog number and item

23 textual information?

24 A   All five.

25 Q   Does Lawson indirectly infringe in your opinion in

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1 the same manner you have been describing?

2 A Yes.

3 Q Let's look at Claim Nine if we could. Claim Nine

4 is an independent claim, is that right, Doctor?

5 A It is.

6 Q Again, it has the an electronic sourcing system

7 comprising. Is that in your view the same electronic

8 sourcing system that the Court has defined?

9 A It is.

10 Q Which of the configurations has a collection of

11 catalog items stored in electronic format?

12 A All five have this first element.

13 Q Which of the configurations have a first

14 identification code associated with a first term in a

15 first catalog?

16 A First item in a first catalog. That's all five.

17 Q Okay. This last element has a second

18 identification code associated with a second item in a

19 second catalog. Said first item and said second item

20 being generally equivalent and wherein a selection of

21 one identification code from one of said first and

22 second catalogs provides the other identification code

23 from the other of said catalogs.

24   MR. McDONALD: Your Honor, I object. I think

25 for this claim we're just talking about all the

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1 systems except one. So I did rather the questions

2 were phrased in that context.

3   MR. ROBERTSON: I think when he answers the

4 question, we can find out which configurations satisfy

5 this element and therefore that will identify the

6 configurations that are infringed.

7   MR. McDONALD: The prior ones he's already

8 used all the systems. I was a little slow in reacting

9 there.

10   THE COURT: Which ones do you say are charged

11 with infringement in the complaint of Claim Nine.

12   MR. McDONALD: All except No. 1. Systems 2

13 through 5 are accused of infringing Claim Nine, as I

14 understand it.

15   THE COURT: Is that right or is it wrong?

16   MR. ROBERTSON: I don't have it committed

17 right to my memory right this second.

18   Your Honor, let me rephrase it.

19   THE COURT: But you have to go back and

20 rephrase all of them if he's right.

21   You-all know which ones allegedly are

22 infringed. He says that all five infringe it, but

23 whether he accused them of that in the complaint, I

24 don't know. I don't have it in front of me.

25   Do you have it over there, somebody?

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1   MR. ROBERTSON: Let me do it this way, if I

2 could.

3 BY MR. ROBERTSON:

4 Q Doctor, this last element of Claim Nine, let's

5 focus on that. A second identification code

6 associated with a second item in a second catalog said

7 first item and said second item being generally

8 equivalent and wherein a selection of one

9 identification code from one of said first and second

10 catalogs provides the other identification code from

11 the other of said catalogs, what configurations have

12 we seen that can satisfy this claim element of Claim

13 Nine?

14 A That one needs the catagory searched, which I

15 demonstrated with the UNSPSC codes, and that's

16 implemented by the requisition self service module.

17 And as we have defined them, that's configurations 2,

18 3 and 5.

19 Q Just configurations 2, 3 and 5 have the ability to

20 do that UNSPSC capability in order to satisfy this

21 claim element?

22 A That's correct.

23 Q Let's just focus on configurations 2, 3 and 5 for

24 purposes of this claim.

25   THE COURT: The objection to the question,

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1 though, I think, has been cured. When he said all

2 five satisfy element one and satisfy element two, then

3 per force that includes 2, 3 and 5. So he's answered

4 the questions, but the bottom line is that only the

5 configurations 2, 3 and 5 are charged to infringe

6 directly or indirectly Claim Nine; is that right?

7   THE WITNESS: That's right, sir.

8   THE COURT: Was that your opinion, sir?

9   THE WITNESS: Yes, sir, it is.

10   THE COURT: All right. Now, what about

11 indirect?

12 BY MR. ROBERTSON:

13 Q By Lawson making, using, selling, offering for

14 sale or importing electronic sourcing system that's

15 capable of performing all of these elements and by

16 encouraging, aiding, assisting and abetting their

17 customers to use that same system through all of the

18 various evidence you have offered as to providing

19 manuals and guides and online services and training

20 and implementation and servicing, do you have an

21 opinion as to whether all of the elements of Claim

22 Nine are satisfied and Lawson indirectly infringes

23 that claim?

24   THE COURT: As to which systems?

25   MR. ROBERTSON: Two, 3 and 5.

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1   A   Yes, I do.

2   Q   What is the opinion?

3   A   I believe that they indirectly infringe for

4   configurations 2, 3 and 5.

5   Q   Okay. Let's focus on Claim 21 if we can for a

6   minute, of the '516. Let me focus on the last element

7   first, if I could.

8   The last element says, Wherein said determination

9   system includes a cross-reference table matching an

10   identification code from a first located item with a

11   second identification code from a second located item.

12   Do you see that?

13   A   I do.

14   Q   So this element requires a cross-reference table.

15   Do you see that?

16   A   I do.

17   Q   What software application or module of Lawson is

18   required in order to do this cross-reference table

19   matching?

20   A   That's requisition self service.

21   Q   So, therefore, that would include configurations

22   2, 3 and 5; is that right?

23   A   That's right.

24   Q   So focusing only on configurations 2, 3 and 5 for

25   the purposes of Claim 21, is it your opinion that

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1   those configurations comprise an electronic sourcing

2   system?

3   A   Yes, it is.

4   Q   Do those configurations have a requisition module

5   including data fields, user generated criteria entered

6   into at least one of said data fields to generate at

7   least partial criteria corresponding to a desired

8   item?

9   A   They do. The requisition module has data fields

10   like the name of the requester. And the user

11   generated criteria could be things like the vendor

12   number, vendor name, item number, manufacturer number.

13   Q   Do the configurations 2, 3 and 5 have a catalog

14   collection searching module, said searching module

15   including a collection of catalogs of items stored in

16   an electronic format, a catalog collection criteria

17   used to select less than the entire collection, said

18   searching module being used to generate additional

19   search module criteria for said data fields of said

20   requisition module?

21   A   They do. And we saw that when I did a search for

22   Dell, and that returned items, and I drilled down on

23   the items. And the item page produced the -- what's

24   the proper name for it? Yeah, to generate additional

25   search module criteria.

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1   So in the item description, there were things like

2   that cost, and the unit of measure, and the vendor

3   name, and I could have used those items like vendor

4   name as the additional search criteria.

5   Q   Do configurations 2, 3 and five have a multiple

6   purchase order generation module, said purchase order

7   generation module creating multiple purchase orders

8   from a single requisition created with said user

9   generated criteria and said search module criteria?

10   A   Yes, they do, and we saw that in three of my

11   demos.

12   Q   Do configurations 2, 3 and 5 of the accused Lawson

13   systems satisfy the element wherein each of at least

14   two catalogs include a generally equivalent item from

15   a different source of said requisition module working

16   in combination with said catalog searching module to

17   determine multiple sources for said item?

18   A   They do, and we saw that in my first demo where I

19   looked for -- I used the UNSPSC codes to look for

20   notebook computers and found two different computers

21   from two different vendors.

22   Q   Do configurations 2, 3 and 5 satisfy the element

23   wherein said multiple sources is limited by said

24   catalog searching module providing a match according

25   to said user generated criteria, said search module

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1   criteria in a determination system that located items

2   are generally equivalent?

3   A   They do. And, again, we saw that in my first demo

4   using the UNSPSC codes to drill down to notebook

5   computers, and we found the IBM ThinkPad and the Dell

6   notebook.

7   Q   Do configurations 2, 3 and 5 satisfy the claim

8   element wherein said determination system includes a

9   cross-reference table matching identification codes

10   from a first located item with a second identification

11   code from a second located item?

12   THE COURT: He's already answered that. He

13   answered that. That's what you started with. You

14   started with six, and you did 1, 2, 3, 4 and 5

15   elements.

16   Is your answer yes or no?

17   THE WITNESS: The answer is yes.

18   Q   Do you have an opinion as to whether or not Lawson

19   indirectly infringes Claim 21 by inducing infringement

20   by all of the activities that we've previously

21   described by offering a system that's capable of

22   performing these claim elements?

23   A   My opinion is that they do.

24   Q   Would that be for all the elements?

25   A   It would.

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1   Q Can we go to Claim 22? Claim 22, again, is one of
2   these dependent claims which depends on Claim 21,
3   which adds the additional limitation wherein said
4   determination system includes an identical
5   identification code for each of said located items.
6   Do you have an opinion as to whether or not the
7   configurations of the accused Lawson systems 2, 3 and
8   5 satisfy that claim element?
9   A My opinion is that they do. We saw that twice.
10   Once in the demonstration where we drilled down to
11   notebook computers and this morning where we drilled
12   down to halogen lamps. The UNSPSC codes were
13   identical for the two notebook computers and identical
14   for the two halogen lamps.
15   THE COURT: Which of the configurations are
16   we talking about; 2, 3 and 5?
17   THE WITNESS: Two, 3 and 5.
18   BY MR. ROBERTSON:
19   Q Why don't we go to Claim 29 of the '516.
20   Actually, I'm reminded I may have overlooked indirect
21   infringement on this one. Does Lawson indirectly
22   infringe Claim 22 in the same manner that you have
23   been describing, for example, as they indirectly
24   infringe Claim 21?
25   A Yes.

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1   Q Okay. Thank you.
2   Claim 29 recites an electronic sourcing system.
3   I'd like you to focus only on configurations 2, 3 and
4   5 for purposes of this claim.
5   Are configurations 2, 3 and 5 an electronic
6   sourcing system in your opinion as the Court has
7   defined it?
8   A They are.
9   Q Do configurations 2, 3 and 5 have a collection of
10   catalogs of items stored in electronic format?
11   A They do.
12   Q Do configurations 2, 3 and 5 have a first set of
13   predetermined criteria associated with said collection
14   of catalogs?
15   A They do.
16   Q Do configurations 2, 3 and 5 have a second set of
17   predetermined criteria associated with items from each
18   of said catalogs?
19   A They do.
20   Q Do configurations 2, 3 and 5 have a catalog
21   selection protocol, said catalog selection protocol
22   relying on said first set of predetermined criteria to
23   select less than said entire collection of catalogs
24   and including matching a vendor identification code
25   with a subset of said collection of catalogs wherein

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1   said subset of catalogs includes both a vendor catalog
2   from a predetermined vendor and a second catalog from
3   a predetermined third party?
4   A Yes, they do. We saw that in my demo for the
5   notebook computers.
6   Q The Court has defined "subset" in its glossary.
7   What has the Court defined "subset" to be?
8   A Less than all of a set.
9   Q Did you apply that construction in rendering your
10   opinions?
11   A I did.
12   Q Next element of Claim 29 of the '516 recites a
13   search program, said search program relying on said
14   second set of criteria to select specific items from
15   said catalogs determined from said catalog selection
16   protocol. Do you see that?
17   A I do.
18   Q Do you have an opinion as to whether or not
19   configurations 2, 3 and 5 satisfy that claim element?
20   A They do. We saw that in my demonstration
21   searching for Dell as the first predetermined criteria
22   and the Dimension 8100 as the second.
23   Q The last element of Claim 29 recites the
24   cross-reference table linking a vendor item catalog
25   number from said vendor catalog with an item catalog

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1   number from said predetermined third party.
2   Do configurations 2, 3 and 5 satisfy that claim
3   element?
4   A They do using the UNSPSC codes.
5   Q Do you have an opinion as to whether or not Lawson
6   induces infringement of its customers by providing an
7   electronic sourcing system that's capable of doing all
8   of these elements of Claim 29?
9   A My opinion is that they do.
10   Q Earlier I asked you whether or not these five
11   configurations in the manner that they are configured
12   as we've defined them had any kind of substantial
13   non-infringing use if they had at least two product
14   catalogs available to them. Do you recall that?
15   A I recall the question.
16   Q With respect to indirect infringement as to all
17   the claims you have just identified for any of the
18   configurations that are the subject of indirect
19   infringement, do you have an opinion as to whether or
20   not Lawson would contribute to infringement if those
21   systems as configured had no substantial
22   non-infringing use?
23   A I didn't understand the question.
24   Q Sure. Let me go back. Earlier you went through
25   this issue of whether or not there was a substantial

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1   right?

2   A It's the average, but you can't draw the

3   conclusion that therefore there are few items per

4   vendor. You can say on average there are 12 in that

5   instance, but there could be 30,000 from one vendor

6   and the rest distributed over the others. I didn't

7   ask that question. I didn't read --

8   THE COURT: That's enough. Thank you.

9   I think you can go on to another topic.

10 Q Do you have an understanding, Dr. Weaver, as to

11 about how many words a Lawson customer can use to

12 describe the product in the item master?

13 A No, because that's not a part of the Court's

14 definition of "catalog."

15 Q Would you agree that the purpose of the Lawson

16 item master is different from the purpose of a typical

17 published catalog like a Sears catalog?

18 A No.

19 Q Would you agree that the typical published Sears

20 catalog is intended to sell products to people?

21 A That is one of its purposes.

22 Q Would you agree that the Lawson item master, its

23 purpose is not to sell products to people?

24 A Its purpose is to find items, yes.

25 Q You would agree that the Lawson item master's

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1   purpose is not to sell products, correct?

2   A I would.

3   Q Now, you talked a little bit in your direct

4   testimony about selecting portions of a database to be

5   search, correct?

6   A Yes, I did.

7   THE COURT: Before you go there, do you have

8   any understanding about what happens if I'm a customer

9   of Lawson's, and I order a Punchout, and it comes from

10 Dell, whether Lawson gets any money from that or not?

11 Do they get paid or does the money all go to Dell?

12   THE WITNESS: In my testimony yesterday and

13 in the documentation I showed, I said that when Lawson

14 sets up an agreement with a Punchout partner, Dell or

15 whoever, that the Punchout partner pays a fee.

16   THE COURT: I'm talking about on an

17 individual purchase. Does Lawson get a cut or a

18 percentage or fee or anything on the purchase basis?

19   THE WITNESS: I don't know on a per purchase.

20   THE COURT: Sorry for interrupting. I

21 apologize. Excuse me, Mr. McDonald.

22 BY MR. McDONALD:

23 Q If you can give me a second, I will try to get to

24 the Punchout and pick up where you left off.

25   THE COURT: I interrupted you. I shouldn't

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1   have. But you had just gotten started, and I wanted

2   to follow-up with what he was saying.

3   BY MR. McDONALD:

4   Q You do understand, don't you, Dr. Weaver, that

5   Lawson doesn't dictate what vendors make available to

6   customers when they are a Punchout partner?

7   A I think that's right.

8   Q All those websites you mentioned yesterday from

9   Staples, that Stapleslink.com, Lawson has no control

10 over that website, correct?

11 A Oh, goodness, that's not true. Lawson has immense

12 control over that website.

13 Q Tell me about the control Lawson has over

14 Stapleslink.com.

15 A When the Lawson customer clicks on that -- which

16 one did you say. Staples?

17   THE COURT: Stapleslink.com; is that right?

18   MR. McDONALD: That's right.

19 A When the customer clicks on that Staples icon,

20 then Lawson sets up a special connection with the

21 Staples link, and it exchanges authentication

22 information. It issues that Punchout setup request.

23 It waits for the servlet on the Stapleslink.com

24 website to send back the Punchout setup response that

25 includes the URL to which Lawson is supposed to

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1   redirect this particular customer.

2   So the customer goes to that site. The customer

3   shops. Presumably buys something. Puts it in the

4   shopping cart. Then the shopping cart contents at the

5   time of checkout are returned in a special format.

6   Lawson interprets that format. Puts it in a cache

7   data file. Closes out the session securely, and then

8   starts processing the checkout items to put them into

9   the Lawson shopping cart. So Lawson has immense

10 control.

11 Q Isn't everything you just described relating to

12 simply the communication back and forth with the

13 Stapleslink.com website as opposed to what is actually

14 posted or shown or displayed or done at the website

15 itself?

16 A That's what I'm trying to say, yes, that Lawson

17 has complete control over the communication system.

18 Q Let me ask you a different question.

19 A Sure.

20 Q The website itself, who controls the

21 Stapleslink.com website? That's a different question

22 from how is the communication to that website, right?

23 A I just explained the communications.

24 Q I'm exploring the issue of the difference between

25 the communication with the website and who is actually

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1 controlling the website itself. Do you understand
2 that distinction?
3 A Well, the control of the website, as I've just
4 explained, is a shared responsibility because the
5 servlet, which is part of Staples, is returning a URL
6 to Lawson saying where should we redirect the user's
7 browser.
8 Q When I have --
9   THE COURT: Excuse me, Mr. McDonald. Are you
10 asking him who has control over putting on the Staples
11 link website whatever is on the website?
12   MR. McDONALD: That's where I was going.
13   THE COURT: Well, that's different than
14 whether there's control because control has a
15 component of it in the interrelated nature of things,
16 according to him, that I think is distracting from the
17 purpose.
18   What you want to know is: Who is it that
19 puts products on the Staples link website, right?
20   MR. McDONALD: Let's try that.
21   THE COURT: Try that and see if you like it
22 and go from there and see if you can find another one
23 you like.
24 BY MR. McDONALD:
25 Q With the Stapleslink.com website, who is in charge

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1 of loading up a list of products on that website?
2 A Staples is in charge of the content displayed on
3 the website.
4 Q Does Lawson have any say in what content Staples
5 displays at that website?
6 A I don't know.
7 Q If I understood you right, when a customer uses
8 that Stapleslink.com Punchout, can they do a search
9 for products at the Stapleslink.com website?
10 A Yes.
11 Q Whose responsible for putting together the
12 computer stuff that you need to do a search at the
13 Stapleslink.com website?
14 A The search on the stapleslink.com website uses the
15 Staples search engine.
16 Q How do you know that?
17 A Because that's the way these systems work.
18 Q Have you ever done anything to check it out?
19 A Well, I know how the protocols operate. And once
20 you're redirected to that site, now you're working in
21 that environment at Staples.
22 Q My question is did you do anything for your
23 $160,000 to check that out?
24 A No.
25 Q Did I understand right for this case you did talk

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1 to a source code expert, right?
2 A I did.
3 Q Because you thought that was pretty important to
4 understand the source code and how that operated
5 behind the scenes in the Lawson system, right?
6 A Yes.
7 Q You didn't check that out for the Punchout
8 partners that do the actual searching and display the
9 actual data that you showed us in those demonstrations
10 yesterday, right?
11 A I never made an issue of it, so no. There's no
12 need to check it out.
13 Q I think in your demo of the Punchout websites
14 yesterday you were also going through the issue of
15 availability of inventory; is that correct?
16 A Correct.
17 Q Is it true that in your examples the Staples and
18 the Dell, not Lawson, would have control over checking
19 out the inventory?
20 A That's true, the information comes from the
21 Punchout partner.
22 Q Lawson has no idea what Dell or Staples has in
23 inventory, right?
24 A Probably not.
25 Q And you understand that for purposes of the claims

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1 in this case there's some structure that has to be
2 analyzed and compared to the Court's interpretation of
3 the claims to make sure the structure corresponds?
4 A Of course.
5 Q You didn't do that analysis with respect to the
6 searching or checking inventory functions at the
7 Punchout vendor websites, correct?
8 A I think you've mischaracterized what I did. I
9 understand how -- let's use Staples as your example.
10 I understand how a website works. I understand how a
11 search engine works. I understand how one checks
12 inventory. What I was concentrating on, and this is
13 consistent -- in my opinion, it's consistent with the
14 Court's construction of the means-plus-function claims
15 was that Lawson had control over what information was
16 sent to the Staples site and what information was
17 returned. And I think I demonstrated that clearly.
18 Q So you just think because you have knowledge, you
19 can assume what's going on at those vendor websites
20 that you didn't have to check that out?
21 A That's right.
22   THE COURT: Is this a convenient place in
23 your examination to break for lunch, Mr. McDonald?
24   MR. McDONALD: This would be a dandy spot,
25 Your Honor.

917

Weaver - Redirect   917

1   that?

2   A   I remember the question.

3   Q   And does it matter, for the purposes of your analysis for

4   infringement, whether or not Lawson receives a payment when a

5   customer uses the Lawson Punchout system?

6   A   Certainly not. That's not any part of the claims.

7   Q   Do you know whether Lawson receives fees, sometimes tens

8   of thousands, hundreds of thousands of dollars for licensing

9   this software?

10 A   Yes.

11 Q   Is that your understanding as how Lawson receives

12 compensation for these products?

13 A   Well, the licensing of the software as well as the

14 professional services.

15 Q   So Lawson receives fees also --

16   MR. McDONALD: Your Honor, we object as outside the

17 scope of cross.

18   MR. ROBERTSON: Fair enough, Your Honor. This was a

19 question raised by the Court, so I'll move on.

20   MR. McDONALD: Actually, I move to strike those

21 answers that were related to Lawson's revenues.

22   MR. ROBERTSON: I think it was within fair scope of

23 followup of the Court's question. I just wanted to --

24   THE COURT: Objection to the last question is

25 sustained. The request to strike the answers is not.

918

Weaver - Redirect   918

1   Previously given.

2   Q   Can the customer select the Punchout sites that it wants

3   Lawson to provide that customer with access to?

4   A   Not only can it, it does.

5   Q   And then does Lawson actually facilitate access to those

6   Punchout partner sites?

7   A   Absolutely. We spent some time discussing that.

8   Q   Did you have access to any of the Lawson customer source

9   code?

10 A   No.

11   MR. McDONALD: Object to that as to vague as to what

12 Lawson's customer source code is.

13   MR. ROBERTSON: Well, you asked the Doctor if he had

14 access to the Lawson customer source code. I'm just asking the

15 Doctor if it was provided in any way.

16   MR. McDONALD: I never that. We were asking about

17 the vendors.

18   THE COURT: I don't remember that question, but --

19   MR. ROBERTSON: I had a note of it, Your Honor, but

20 I'll move with on. I'll withdraw the question.

21   THE COURT: There was a question about the vendor

22 source code, but I don't think there was one about customers.

23 Q   Did you have access to the vendor source code?

24 A   No.

25 Q   Can you also use the EDI module to obtain information on

919

Weaver - Redirect   919

1   availability of inventory?

2   A   Absolutely. We talked about that PO 850, the purchase

3   order -- I'm so sorry, Your Honor -- and the PO 855, purchase

4   order acknowledgment, that could contain information on whether

5   an item was available in inventory.

6   Q   Now, Dr. Weaver, claim one of the '172 patent, if you

7   could look at that for a moment. Maybe we can bring that up on

8   the screen.

9   You were asked some questions about your report and

10 whether a database -- when we refer to the database here as a

11 catalog; do you recall that?

12 A   Yes.

13 Q   Were you attempting in your report to perform a claim

14 construction on this first element as to what a database

15 containing data relating to items associated with at least two

16 vendors means?

17 A   No. That's not my job.

18 Q   So you weren't trying to rewrite this claim in any way,

19 were you?

20 A   No, sir.

21 Q   Confirm for me that the claim does include the term

22 database; correct?

23 A   It does say database.

24 Q   I'm sorry. Let me rephrase the question. It doesn't

25 include the claims term catalog which the Court has construed;

920

Weaver - Redirect   920

1   is that right?

2   A   It does not contain the term catalog.

3   Q   I just want to have some clarity here if I can, because I

4   want to make sure I understand it, on what constitutes the

5   catalogs in the Lawson accused systems, and for this I think we

6   can talk about all five configurations. So can you tell us,

7   because I do recall the Judge had a question, so what is it?

8   A   It's the item master and the vendor item table.

9   THE COURT: So that's a catalog?

10   THE WITNESS: It contains data from catalogs.

11   THE COURT: But is that a catalog within the meaning

12 of the claim construction as you see it?

13   THE WITNESS: It is a catalog, and it is many

14 catalogs. It's important that I make clear that it contains

15 items from many catalogs, in the plural.

16   THE COURT: All right. And then is there any other

17 catalog in the Lawson system?

18   THE WITNESS: No, sir. It has only one database.

19 Q   I guess my question is, do those two tables need to have

20 item data in them to constitute the catalogs?

21 A   Absolutely.

22 Q   So in addition to those two tables, we need actual data;

23 correct?

24 A   Oh, yeah. The tables are the repository of the data.

25   THE COURT: Before you leave that area, I'm confused,

933

1   THE COURT: Okay. Are you about ready to get

2 back to where we were, sir?

3   MR. GREER: Yes, sir.

4   THE COURT: When you're ready, plunk your

5 magic button.

6   (The video deposition of Jeffrey P. Frank is

7 resumed.)

8   THE COURT: Looks like they are still working

9 on the other matter. So do you have another witness?

10   MR. ROBERTSON: Yes, Your Honor. I do have

11 the Excel Spreadsheet was sent to Lawson on

12 December 31 containing the excerpts of the Frank

13 deposition that were to be played. The ones that

14 are --

15   THE COURT: Well, give it to them. They are

16 working on it.

17   MR. ROBERTSON: If they are working on it,

18 fine, Your Honor. We don't need to delay and retain

19 the jury.

20   THE COURT: No, we're not going to hold the

21 jury up for this. We're moving right along.

22   MS. ALBERT: EPlus would call Hannah Raleigh.

23   THE COURT: Where is Ms. Raleigh?

24   MS. ALBERT: I understood she was here in

25 person.

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1   THE COURT: Who is she?

2   MS. ALBERT: She's an employee from Lawson.

3   THE COURT: Okay.

4   MS. ALBERT: Your Honor, if I could just have

5 a brief moment. We have some exhibit binders for

6 Ms. Raleigh and the Court.

7   THE COURT: You're going to trust

8 Mr. Robertson to handle that?

9   MR. ROBERTSON: We're all in trouble then.

10   THE COURT: Here he comes. Oh, no.

11   MS. ALBERT: It's not quite as daunting as it

12 might appear. There are just a couple of voluminous

13 documents. I think there are two binders total.

14   THE COURT: I wonder if your cap and trade

15 bill would include deductions for paper killing for

16 law firms. Tree killing.

17   Is that for me? Thank you for my present.

18 Thank you, sir.

19   All right.

20   HANNAH RALEIGH, called by the Plaintiff, first

21 being duly sworn, testified as follows:

22

23   DIRECT EXAMINATION

24 BY MS. ALBERT:

25 Q Would you state your full name for the record,

935

1 please?

2 A Hannah Edmundson Austin Raleigh.

3 Q You are currently employed by Lawson with its

4 professional services organization; is that correct?

5 A That's correct.

6   THE COURT: Can you hear all right, ladies

7 and gentlemen?

8   THE JURY: Yes.

9   THE COURT: If you have any problems, let us

10 know.

11   MS. ALBERT: I have a little bit of a hoarse

12 voice.

13   THE COURT: No, I was talking about the

14 witness.

15 BY MS. ALBERT:

16 Q Your current position at Lawson is one of practice

17 director; is that correct?

18 A That's correct.

19 Q And your responsibilities as practice director are

20 to oversee customer implementations of Lawson's

21 products at new customers and significant

22 implementations of current customers in the eastern

23 region of the United States; is that correct?

24 A That's right.

25 Q And your responsibilities as practice director

936

RALEIGH - DIRECT   936

1 include overseeing customer implementations of

2 Lawson's procurement products; is that correct?

3 A That's correct.

4 Q Now, Lawson's Professional Services Organization

5 has roughly 1500 employees worldwide; is that correct?

6 A That's roughly correct, sure.

7 Q Isn't it true that 90 percent or more of Lawson's

8 customers engage Lawson Professional Services at some

9 time for some form of assistance over the course of

10 their relationship with Lawson?

11 A Yes, over the course of their full use of the

12 products, yes.

13 Q Now, among the different types of services

14 provided by Lawson's Professional Services

15 Organization to Lawson's customers, those services

16 would include training services; is that correct?

17 A Absolutely.

18 Q And Lawson's Professional Services Organization

19 also provides services that are referred to as project

20 management services to Lawson's customers; is that

21 correct?

22 A Yes, we do.

23 Q Lawson's Professional Services Organization also

24 services that are referred to as implementation

25 consulting services; is that correct?

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RALEIGH - DIRECT   937

1   A   That's correct.

2   Q   And Lawson's Professional Services Organization

3   also provides services that are referred to as upgrade

4   consulting services; is that correct?

5   A   That's correct.

6   Q   And those upgrade services would involve assisting

7   the clients with upgrading from one version of a

8   Lawson system to the next released version of that

9   system; is that correct?

10 A   That's correct.

11 Q   Lawson's Professional Services Organization also

12 provides technical development services to customers

13 such as interface development and customization

14 development services; is that correct?

15 A   We do at times, yes.

16 Q   Lawson's Professional Services Organization also

17 offers services to Lawson's customers that are

18 referred to as learning services; is that correct?

19 A   That's true.

20 Q   Among the learning services that Lawson's

21 Professional Services Organization provides to

22 Lawson's customers would be public instructor led

23 training in one of Lawson's offices or on site

24 instructor led training for a specific customer at

25 their site; is that correct?

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1   customers with -- and I'm reading from the first line

2   there. Instructions on the key setup components and

3   processing functionality of the inventory control

4   application; is that correct?

5   A   That's correct.

6   Q   And among the training included in that course

7   would be, in following along with the second sentence,

8   instructions on the key setup components and

9   processing functionality -- excuse me, instructions

10 concerning how to set up the item master associated

11 with the inventory control application; is that

12 correct?

13 A   Yes, that's right.

14 Q   Turn to page 6 of that exhibit, please. Do you

15 see on that page there's a course entitled,

16 Requisition Self Service 8.1-9.0?

17 A   Yes.

18 Q   Lawson also offers a course entitled, Requisition

19 Self Service 8.1/9.0, which introduces major features

20 of requisition self service such as requisition

21 approvals, receiving, and the shopping experience

22 which includes searching the catalog for items, using

23 shopping lists, ordering specials or services, and

24 ordering by categories; is that correct?

25 A   Yes.

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RALEIGH - DIRECT   938

1   A   Sure.

2   MS. ALBERT: Mike, if you would, could we

3   have Plaintiff's Exhibit 202.

4   Q   And, Ms. Raleigh, that is in Volume I of your

5   binders.

6   THE COURT: Before you go anywhere, what was

7   the exhibit number for that Frank deposition? You're

8   going to have to put it in the record because the

9   court reporter wasn't taking it down. Just look it up

10 and tell me later.

11   Go ahead, Ms. Albert.

12 Q   Do you have Plaintiff's Exhibit 202?

13 A   I do.

14 Q   Is Plaintiff's Exhibit 202 a catalog of online

15 courses that Lawson offers to its customers?

16 A   Yeah. It's a catalog that was published at a

17 certain point in time, but yes.

18 Q   Can you turn, please, to page 5 of that exhibit,

19 and the Bates number on that page ends with 4027?

20 A   I'm there.

21 Q   Do you see at the top of the page there's a course

22 entitled inventory control 8.1/9.0 X?

23 A   I do.

24 Q   And Lawson offers this two-day course entitled

25 Inventory Control 8.1/9.0 X that provides its

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RALEIGH - DIRECT   940

1   Q   In this course, Lawson enables its customers to

2   have an experience using an actual Lawson training

3   system that would have the requisition self service

4   application installed; is that correct?

5   A   Yes.

6   Q   I believe I'm done with that document.

7   A   Okay.

8   Q   Lawson's Professional Services Organization also

9   provides services to Lawson's customers that consist

10 of installing the Lawson software on the customers'

11 hardware; is that correct?

12 A   Yes.

13 Q   And you previously mentioned that Lawson provides

14 implementation services to its customers. Do you

15 recall that?

16 A   Yes.

17 Q   Among the implementation services that Lawson

18 provides to its customers, those services would

19 include assistance with designing the configuration of

20 the Lawson software to meet the customer's business

21 requirements; is that correct?

22 A   Yes.

23 Q   Also included among the implementation services

24 that Lawson would provide to its customers would be

25 assisting the customer with developing test scripts

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RALEIGH - DIRECT   941

1   and assisting the customer with testing the software
2   on that equipment; is that correct?
3   A Yes, we assist with customer with all the aspects
4   of implementing the software and those would be
5   included.
6   Q Among the aspects included with implementation
7   would be all aspects up to and including bringing a
8   system live into actual production operation; is that
9   correct?
10 A That's right.
11 Q Lawson also provides -- when a customer's system
12 goes live, that means it's actually operational and in
13 an actual production environment to perform the
14 procurement process; is that correct?
15 A We hope so, yes.
16 Q Now, also included among the services that Lawson
17 would provide to its customers, Lawson can provide
18 hosting services or Lawson physically hosts the
19 customer's system in space that Lawson owns if the
20 customer so desires; is that correct?
21 A We can.
22 Q And Lawson also provides services to its customers
23 to support converting existing systems and conversion
24 of data from those existing systems into the proper
25 format for importation into a Lawson system; is that

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RALEIGH - DIRECT   942

1   correct?
2   A Yes. All of our customers are importing from a
3   previous system, so yes.
4   THE COURT: Excuse me just a minute. I don't
5   know that any of us over here know what hosting means.
6   The way it's been explained sort of leads me to the
7   impression that Lawson has everything on its computer
8   system, but if I'm the customer, I can be in Timbuktu
9   and just use my computer, and I go through you to get
10 what I want. Is that basically right or wrong?
11   THE WITNESS: The only clarification I would
12 make to that is that the system is actually still the
13 customer's system. So it is their system. It is
14 physically housed in a Lawson-owned or leased
15 facility. Obviously, we take care of keeping the
16 lights on and the electricity and those of things, but
17 the system can be accessed, you're correct, from
18 Timbuktu or anywhere else in the world using Internet
19 protocols.
20 Q And Lawson will assist its customer with
21 implementing those systems that it hosts in its own
22 facilities among other services; is that correct?
23 A Yes. It makes no difference where that hardware
24 lives.
25 Q Lawson also provides workshops to educate its

943

RALEIGH - DIRECT   943

1   customers on data migration requirements and data
2   mapping to put this data that's imported from a prior
3   system into a Lawson system; is that correct?
4   A That's right.
5   Q And Lawson Software includes within the software
6   import and export utilities that can be utilized for
7   this data conversion process; is that correct?
8   A That's correct.
9   Q As part of the data conversion effort, Lawson's
10 Professional Services Organization will actually
11 convert item master data from a client's preexisting
12 system to a format for use in the Lawson procurement
13 system; is that correct?
14 A Yes. When requested to help them with that, yes.
15 Q Have you actually been involved in implementation
16 projects where the customer has so requested Lawson to
17 perform data conversion efforts?
18 A Yes, I have been involved in some projects where
19 the customer needed assistance from the Lawson team to
20 do various elements of that conversion process.
21 Sometimes some steps and sometimes other systems, but
22 certainly I've been involved in projects where we
23 participate in that process.
24   MS. ALBERT: Mike, if we could have
25 Plaintiff's Exhibit 216. And, Ms. Raleigh, that's in

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RALEIGH - DIRECT   944

1   Volume II of your binders.
2   Q Are you there?
3   A I'm here.
4   Q Ms. Raleigh, is this a copy of Lawson's statement
5   of work for system implementation it performed for the
6   Public Health Trust Jackson Health System?
7   A Yes, it is.
8   Q And you were Lawson's practice director that
9   oversees the implementation of Lawson's system for
10 this client; is that correct?
11 A That's correct.
12 Q And Lawson received the award of the contract for
13 this particular implementation project; is that
14 correct?
15 A That's right.
16   MS. ALBERT: Mike, if you could turn to page
17 15 of the exhibit and the Bates number on that page
18 ends with 5374.
19 Q Do you see the heading on that page entitled "Data
20 migration and conversion scope"?
21 A I do.
22 Q Below that there's an item, 3.5.1 that refers to
23 master file and configuration table value builds, do
24 you see that?
25 A I do.

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1   Q   And the text below that indicates that the data to
2   be converted will be identified during the design
3   phase. The Lawson functional consultants will provide
4   assistance with data mapping support, data loading
5   support, and executing uploads via Lawson add-ins tool
6   to build the required master files and
7   configuration/setup table values. Do you see that?
8   A   I do.
9   Q   And the Lawson professional consultants did
10 actually provide this assistance to Jackson Health
11 System as indicated in the statement of work; is that
12 correct?
13 A   We did.
14 Q   And in the second paragraph below that, the second
15 sentence of that paragraph, indicates that the
16 customer will have access to Lawson's conversion
17 manuals and file layouts. Do you see that?
18 A   I do.
19 Q   Did Lawson actually provide the customer Jackson
20 with the Lawson conversion manuals and file layout as
21 indicated in the statement of work?
22 A   We did. I want to clarify that this entire
23 section does refer to all of the aspects of the
24 implementation, not purely the procurement
25 implementation. So our involvement over the course of

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RALEIGH - DIRECT   946

1   the project may have, you know, been different
2   depending on which part of the system we were building
3   at the time. So there could be differences, but yes.
4   Q   But this particular implementation project did
5   include the procurement modules; is that correct?
6   A   It did.
7   Q   Continuing on with that second sentence in the
8   second paragraph, it indicates that conversion work
9   session will be conducted to review the Lawson's
10 standard conversion programs and conversion process.
11 Do you see that?
12 A   I do.
13 Q   And Lawson did provide that conversion work
14 session to review the Lawson standard conversion
15 programs and conversion process for Jackson, correct?
16 A   Absolutely.
17 Q   Can you turn to page 16 of the exhibit and the
18 Bates number on that page ends with 375.
19 A   Yes, I'm there.
20 Q   That's table on this page entitled
21 "Responsibilities for master file and configuration
22 table value builds," do you see that?
23 A   I do.
24 Q   The table on this page relates to which party is
25 going to have responsibility for particular tasks

947

RALEIGH - DIRECT   947

1   during the implementation project; is that correct?
2   A   That's right.
3   Q   The second task in the table indicates that Lawson
4   would be responsibility to provide cross functional
5   workshops to define the data migration process and
6   mapping required for Jackson. Lawson did actually
7   provide such a cross functional workshop to define the
8   data migration process and mapping for Jackson Health
9   System, didn't it?
10 A   We did.
11 Q   And the next activity below that in the table
12 relates to migration strategy and process description.
13 Do you see that?
14 A   I do.
15 Q   And Lawson also provided Jackson Health System
16 with migration strategy and process description,
17 correct?
18 A   We did.
19 Q   And if you proceed down, I believe it's the sixth
20 task in the chart, it's identified as training and
21 data migration tools. Do you see that?
22 A   Yeah, I do.
23 Q   And the Lawson personnel delivered standard
24 training and education courses relating to data
25 migration tools to Jackson personnel; isn't that true?

948

RALEIGH - DIRECT   948

1   A   We did. I would probably refer to it more as
2   knowledge transfer than standard training or
3   education. It was less formal than it maybe sounds
4   here, but we did help them understand those tools.
5   Q   And the last task on that page is identified as
6   test load sample data, do you see that?
7   A   I do.
8   Q   It indicates that the client would be responsible
9   for providing sample data and then Lawson is
10 responsible for executing the load of the test data.
11 Lawson, in fact, executed the load of the test data
12 for Jackson in connection with this project; is that
13 correct?
14 A   Yes, we did.
15 Q   Can you turn to the next page of the exhibit.
16 That Bates No. on that page ends with 376?
17 A   I'm there.
18 Q   The first task on this page is identified as
19 production data load. Do you see that?
20 A   I do.
21 Q   And the table indicates that Lawson was
22 responsible for executing the load of the test data
23 for Jackson. Lawson did in fact, load the production
24 data for Jackson in connection with this
25 implementation project, correct?

949

RALEIGH - DIRECT   949

1   A We did. I believe we did.

2   Q And continuing down the page. Lawson also

3   conducted a full migration system test for Jackson in

4   connection with this project; is that correct?

5   A We did.

6   Q And Lawson was also responsible for the live data

7   migration for Jackson system, correct?

8   A We were.

9   Q If you look down below that table on the same page

10   there's another table, table 3.5.1.1.1, do you see

11   that?

12   A I do.

13   Q And the title on that table is master file in

14   configuration table value build and scope; do you see

15   that?

16   A I do.

17   Q And the table on this page identifies the master

18   files and configuration tables that were included

19   within the scope of the implementation project that

20   Lawson conducted for Jackson; is that correct?

21   A Yes.

22   Q So the data conversions that were included within

23   the scope of the project that Lawson performed for

24   Jackson included the vendor master, the item master

25   and the vendor catalog; is that correct?

950

RALEIGH - DIRECT   950

1   A I would agree with the vendor master and the item

2   master, but if you note, there's a bolded Lawson

3   response next to the vendor catalog specification.

4   I'll also note that the system that was being convert

5   from was Eclipsys, right? So the terminology used

6   here to describe the data is really more relevant to

7   the system from which the data was coming.

8   But if you note the Lawson response related to

9   catalog, vendor catalog, it's really more that that is

10   purely item master data. So we really included the

11   item master data that they may be referring to based

12   on Eclipsys' terminology of the vendor catalog.

13   Q If lawson provided a response to Jackson here that

14   said catalog information is a part of Lawson's item

15   master, it wouldn't be converted as part of conversion

16   item No. 22 above; is that correct?

17   A Based on the definition of catalog information

18   that, I believe, was related to Eclipsys' definition

19   of vendor catalog information.

20   Q But Lawson told Jackson that the vendor catalog

21   data in Jackson's prior system would be included as

22   part of the data that would be converted in connection

23   with this project, right?

24   A Right. Essentially, we told them that that is

25   item master data, so it would be included under item 2

951

RALEIGH - DIRECT   951

1   there for item master.

2   Q Lawson also provides maintenance and support

3   services to its customers; is that correct?

4   A We do.

5   MS. ALBERT: Mike, if you could, could you

6   put up Plaintiff's Exhibit 208.

7   Q And, Ms. Raleigh, that's in Volume I of your

8   binders.

9   A I'm there.

10   Q Plaintiff's Exhibit 208, this is a handbook that

11   Lawson publishes to its customers to tell them about

12   the types of support services that Lawson offers; is

13   that correct?

14   A That's correct.

15   Q Could you go to page 17 of the exhibit, and the

16   Bates number on that page ends with 050?

17   A I'm there.

18   Q Now, with reference to the chart on that page, it

19   shows that Lawson has four different levels of support

20   services; is that correct?

21   A That's correct.

22   Q There's a bronze level of support service.

23   There's a base maintenance support level; is that

24   accurate?

25   A That's accurate.

952

RALEIGH - DIRECT   952

1   Q There's a silver level of support services.

2   That's an enhanced level of support; is that correct?

3   A That's right.

4   Q And then there's a gold level of support services

5   that's entitled, Application Management; is that

6   accurate?

7   A It incorporates Application Management in addition

8   to others, yes.

9   Q Well, as we're proceeding up this chart, for each

10   successive level of support, Lawson would provide all

11   of the support at the level beneath that level plus

12   the additional support listed for the level that it

13   relates to; is that accurate?

14   A That's accurate.

15   Q Then there's a top level of support entitled,

16   Platinum that relates to hosted solutions; is that

17   correct?

18   A That's right.

19   Q So some services that would fall within the base

20   or bronze level of maintenance services that Lawson's

21   provides to its customers would include providing them

22   with upgrades to licensed products; is that accurate?

23   A That's true.

24   Q The enhanced level of support service that Lawson

25   provides to its customers at the silver level of

953

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1 support would include 24 by 7 emergency support; is

2 that correct?

3 A Yes, that's correct.

4 Q By 24 by 7 emergency support, that means 24 hour

5 by seven-day emergency support; is that correct?

6 A That's right.

7 Q In addition to the support services, Lawson can

8 also provide various different types of documentation

9 to its customers through its support website; is that

10 correct?

11 A That's right.

12 Q And at the bottom of the page there's some

13 additional options listed there. So Lawson will also

14 provide, for example, an additional option of pager

15 support services for a client; is that correct?

16 A That's right.

17 Q So if a customer has as critical event happening

18 during nonbusiness hours, a Lawson support person

19 would be on call for the customer to respond to that

20 problem; is that correct?

21 A That's right.

22 Q And Lawson also offers something that's called a

23 Lawson knowledge base; is that accurate?

24 A We do.

25 Q That's included for customers that subscribe to

954

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1 the base level of support; is that correct?

2 A That's right.

3 Q And this knowledge base includes documentation

4 such as user manuals and product release notes and

5 frequently asked questions and documentations of that

6 of support; is that correct?

7 A That's right.

8 Q And Lawson also offers services that are referred

9 to as WebEx online support center services where a

10 Lawson support person may access a customer system

11 over the Internet and take control of the customer's

12 system to diagnose a problem; is that correct?

13 A Depending on the nature of the problem, yes, we

14 might use that tool.

15   MS. ALBERT: No further questions.

16   THE COURT: Any questions?

17   MR. SCHULTZ: Yes, Your Honor.

18

19   CROSS-EXAMINATION

20 BY MR. SCHULTZ:

21 Q Good afternoon, Ms. Raleigh.

22 A Good afternoon.

23 Q It's fair to say that Lawson helps its customers?

24 A Absolutely.

25 Q As part of helping your customers, do you learn

955

1 about what your customers do with the Lawson system?

2 A Certainly.

3 Q I'd like you to refer back to Exhibit 216, please.

4 A Yes, sir.

5 Q Are you there?

6 A I am.

7 Q This is the same exhibit that you were referenced

8 to during the examination by Ms. Albert?

9 A Yes. The statement of work, yes.

10 Q Before Lawson gets to a statement of work, what is

11 the process for Lawson to obtain the work from a

12 particular customer?

13 A The process often starts with and did for Jackson

14 start with requests for proposal that the customer

15 issued to multiple software vendors based on the

16 business processes or the functionality of what they

17 needed to run their business. So that process enables

18 each of the vendors to respond to the customer's

19 questions about what functionality we have within our

20 software and hopefully get to a point where they

21 understand that we can meet their business needs.

22   So that process takes quite awhile and certainly,

23 you know, is fairly iterative. At the, you know,

24 conclusion of the sales process, typically when a

25 customer has chosen to work with a particular vendor,

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1 in this case Lawson, they then also begin to talk

2 about how they're going to get the software

3 implemented.

4   So there may be a separate competitive cycle or

5 maybe not for choosing a services partner, choosing

6 someone to help them, train them, and work with them

7 throughout the process of getting the software

8 implemented.

9 Q In the RFP process, that's when the customer is

10 actually providing to Lawson and other potential

11 vendors what it wants; is that right?

12 A Exactly.

13 Q So as part of that have process, whose language is

14 being used in an RFP?

15 A The customer is using their language essentially

16 because they are issuing it to different vendors. So

17 there's no common language, if you will, between

18 different vendors and how they, you know, how they

19 describe their software, the business processes.

20 There are lots of terms that are unique to different

21 vendors.

22   So a customer generally would base that RFP and

23 their questions on their past experience, whether it's

24 the way in which they describe a business process

25 inside their organization -- as an example, some

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1   the afternoon on Tuesday, it looks like. If not, you

2   may be kicking off on Wednesday morning, it depends.

3   My wife criticizes me substantially for

4   checking out the NOAA weather and other weather items

5   like the Weather Channel, and she accuses me of being

6   an old man with nothing to do because I do that, but

7   there are times when it comes into play. And I saw

8   that there is a very significant snowstorm supposed to

9   hit the Midwest, and I don't want you-all to go home

10   over the weekend and get trapped there.

11   So be advised that being trapped in the snow

12   is not a sufficient excuse not to start the trial.

13   Mr. Carr will be ready to go.

14   And I am not, I want you to know, being paid

15   by any merchant in town to keep you-all here.

16   All right. Thank you very much. Have a nice

17   weekend. Get some rest.

18   (The proceedings were adjourned at 5:17 p.m.)

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1        IN THE UNITED STATES DISTRICT COURT
2       FOR THE EASTERN DISTRICT OF VIRGINIA
3              RICHMOND DIVISION
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5   -------------------------------------
                                 :
6   ePLUS, INC.              :  Civil Action No.
                    :  3:09CV620
7   vs.                    :
                          :
8   LAWSON SOFTWARE, INC.        :  January 11, 2011
                           :
9   -------------------------------------
10
11       COMPLETE TRANSCRIPT OF THE JURY TRIAL
12       BEFORE THE HONORABLE ROBERT E. PAYNE
13       UNITED STATES DISTRICT JUDGE, AND A JURY
14
    APPEARANCES:
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    Jennifer A. Albert, Esquire
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23
24        Peppy Peterson, RPR
        Official Court Reporter
25      United States District Court
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1           PROCEEDINGS
2
3       THE CLERK:  Civil action number 3:09CV00620, ePlus,
4   Incorporated versus Lawson Software, Incorporated.  Mr. Scott
5   L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, Mr.
6   Michael G. Strapp, and Mr. David Young represent the plaintiff.
7       Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms.
8   Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent
9   the defendant.  Are counsel ready to proceed?
10      MR. ROBERTSON:  Plaintiff is, Your Honor.
11      MR. McDONALD:  Yes, we are, Your Honor.
12      THE COURT:  What did you all need to talk about?
13      MS. STOLL-DeBELL:  We actually resolved it, Your
14  Honor, between the time we that mentioned --
15      THE COURT:  Tell them to bring the jury in.  What do
16  we have this morning?
17      MR. ROBERTSON:  The first witness we're calling this
18  morning is Mr. Keith Lohkamp, Your Honor.  He's a Lawson
19  employee.  I have a number of binders associated with the
20  witnesses this morning.  I want to make sure my paralegal --
21  oh.
22
23        (Jury in.)
24
25      THE COURT:  Good morning, ladies and gentlemen.  All
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1   right, we have a witness.  Next witness.
2       MR. ROBERTSON:  Mr. Keith Lohkamp.
3       THE COURT:  All right, Keith Lohkamp.
4
5         KEITH LOHKAMP,
6   a witness, called by the plaintiff, having been first duly
7   sworn, testified as follows:
8         DIRECT EXAMINATION
9   BY MR. ROBERTSON:
10  Q   Good morning, Mr. Lohkamp.
11  A   Good morning.
12  Q   Mr. Lohkamp, you are a Lawson Software employee; correct?
13  A   Yes, I am.
14  Q   And you are a product strategist for supply chain
15  management; correct?
16  A   Yes.
17      THE COURT:  Can we get the witness to spell his last.
18  Q   Can you please spell your last name, sir, for the record.
19  A   It's L-o-h-k-a-m-p.
20  Q   Can you explain to the jury essentially what supply chain
21  management is?
22  A   Supply chain management involves the procurement of goods
23  and services and the management of the inventory related to
24  managing those goods.  It also includes, can include the sell
25  side, so selling those goods and services as well.
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1 Q And Lawson offers a suite of products that involve supply

2 chain management; correct?

3 A Yes, Lawson offers a suite of supply chain products.

4 Q Can you identify some of them for us, sir?

5 A Some examples of the supply chain management applications

6 include strategic sourcing, contract management, procurement,

7 requisition self-service, procurement punchout, EDI, mobile

8 supply chain management.

9 Q Inventory control?

10 A Inventory control is a module that's part of the

11 procurement application.

12 Q And you mentioned EDI. That term has been bandied about

13 in the courtroom before. Can you explain what your

14 understanding of EDI is as far as that application goes?

15 A EDI stands for electronic data interchange, and what it

16 means is it's an application that sends electronic messages

17 from a buying organization to a selling organization and can

18 receive electronic documents back from the selling

19 organization.

20 Q The vendor?

21 A The vendor, yes.

22 Q And you have been the supply chain management product

23 strategist since 2005; correct?

24 A Correct.

25 Q And that falls within the product management department?

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1 A Yes, it's part of the product management department.

2 Q And part of your responsibilities and duties as this

3 product strategist include supporting sales and marketing; is

4 that right?

5 A Yes.

6 Q And as part of your role in supporting sales and

7 marketing, it's true that you conduct competitive analysis from

8 time to time; correct?

9 A Yes, I do conduct competitive analysis from time to time.

10 Q Why don't you tell the jury what you understand

11 competitive analysis to be?

12 A When I do competitive analysis, I'm looking at what other

13 companies may offer in terms of software and what features and

14 comparing that to what Lawson offers and then trying to figure

15 out how to position our software against the competitors.

16 Q And you've done this in the sphere of procurement;

17 correct, competitive analysis?

18 A I have done competitive analysis in procurement.

19 Q That is, actually go out and look at competitors and see

20 what kinds of features and functionality they are offering for

21 their products, see how Lawson can position itself to better

22 compete; correct?

23 A Yes, I will look at the features competitors offer.

24 Q You've done that, in fact, for the last five years for

25 Lawson; right?

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1 A As part of my responsibilities, I will look at certain

2 products that we may be competing against.

3 Q For the last five years?

4 A For the last five years.

5 Q Isn't it true that you obtain information that use these

6 competitive analyses from actually looking at competitor

7 websites; correct?

8 A Competitor websites are one source I use.

9 Q What are some of the other sources you use?

10 A The other sources might be conferences I attend. I might

11 pick up materials from competitive booths, for example.

12 Q Anything else?

13 A I also may look at analysts' reports on particular

14 companies.

15 Q Are there specific analysts' reports that are dedicated to

16 the procurement field?

17 A There are certain analysts that will publish different

18 reports on procurement.

19 Q And you also speak to Lawson sales employees for their

20 experiences in competing with other companies in the

21 procurement field; correct?

22 A Yes, I will speak with the sales team to get their input

23 as well.

24 Q And as product strategist in supply chain management, you

25 provide product information with respect to marketing

997

1 brochures; correct?

2 A For the products that I work on, I'll provide input on

3 marketing brochures.

4 Q You also do that for the products you work on in the

5 supply chain management, you provide information for content

6 for white papers; correct?

7 A Yes.

8 Q And you also, as part of your responsibilities as the

9 product strategist in procurement, have provided information

10 for the content of Lawson's website; correct?

11 A Yes, I've provided input to the Lawson website.

12 Q And you also provide product information with respect to

13 the content for product presentations at some of these trade

14 shows, for example, you talked about; correct?

15 A Yeah, for the products I work on, I provide content for

16 presentations.

17 Q Which includes procurement; right?

18 A Includes procurement.

19 Q And those various informational documents we just talked

20 about, the website, the brochures, the white papers, in most

21 instances, those are prepared for external audiences; isn't

22 that right?

23 A Brochures and the website and white papers are prepared

24 for the external audiences.

25 Q And they are reviewed by Lawson's legal department for

998

1   accuracy; isn't that right?

2   A   It's my understanding that the legal department reviews

3   those documents.

4   Q   And, of course, when you provide that kind of information

5   with respect to sales or marketing materials in brochures or

6   websites, white papers or other material, you try to be as

7   accurate as possible in that information; isn't that right?

8   A   Yes, we try to be accurate.

9   Q   And so it's not your intent to try to mislead anybody by

10 the content of those documents; correct?

11 A   That's correct.

12 Q   Let's talk a little bit about the Lawson supply chain

13 management and the various modules and applications that are at

14 issue there. Is there a core functionality for the supply

15 chain management that's necessary in order to be able to search

16 for items and then be able to build requisitions and generate

17 purchase orders?

18 A   The core application to be able to requisition items would

19 be the procurement application.

20 Q   That would include inventory control?

21 A   That includes the inventory control module.

22 Q   That would include the requisitions module?

23 A   Includes the requisition module.

24 Q   And that would include the purchase order module; correct?

25 A   Yes, it includes the purchase order.

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1   Q   Now, there are various applications, aren't there, that

2   need to sit on top of those core functional modules that Lawson

3   also offers its products; correct?

4   A   Yeah. Lawson offers additional applications that sit on

5   top of that application.

6   Q   So, for example, one of those would be this requisition

7   self-service application?

8   A   Yes.

9   Q   And another one could be a punchout procurement

10 application?

11 A   Yes, sir, procurement punchout.

12 Q   Procurement punchout, that's an application that, if you

13 will, following my analogy, needs to sit on top of the

14 requisition self-service application; correct?

15 A   It requires requisition self-service, yes.

16 Q   If I want to have procurement punchout, I need to have

17 requisition self-service; right?

18 A   That's correct.

19 Q   There's also this EDI application you talked about?

20 A   Yes.

21 Q   Now, I don't need requisition self-service for the EDI

22 application; correct?

23 A   That's correct.

24 Q   So that can just sit on top of foundation, of this core

25 procurement technology we talked about, inventory control,

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1   requisitions, and purchase order; right?

2   A   Yes.

3   Q   There's something within the inventory control module

4   known as the item master; isn't that right?

5   A   Yes.

6   Q   And the item master is a list of products within the

7   inventory module; correct?

8   A   Yes, a list of products within the inventory control.

9   Q   So a user of this supply chain management software

10 solution we've been talking about -- can we call it S3 solution

11 for short? Are you comfortable with that?

12 A   Yes.

13 Q   This S3 software solution offered by Lawson can have an

14 item master, a list of goods that are available from various

15 suppliers; isn't that right?

16 A   Yes. It's a list of goods that the customers want to

17 purchase. They can come from various sources.

18 Q   And so for each item in the item master, you have a number

19 of data fields associated with that item; isn't that right?

20 A   Yes.

21 Q   So you can have a stock unit of measure, for example?

22 A   Yes.

23 Q   You can have manufacturer information?

24 A   Yes.

25 Q   Manufacturer name?

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1   A   Yes.

2   Q   Vendor name?

3   A   No.

4   Q   Can't have a vendor name in it?

5   A   Not in the item master itself.

6   Q   Where would that vendor information be located; in a

7   vendor table?

8   A   The vendor name is in the vendor table.

9   Q   Okay. Thank you. Isn't one of the data fields you can

10 associate with an item, is a vendor item number?

11 A   Yes. You can associate a vendor item number.

12 Q   And this vendor item number is a catalog number that can

13 be used to order from a supplier; correct?

14 A   Yes. It's the catalog number to order from that

15 particular vendor.

16 Q   This Lawson S3 procurement product we've been talking

17 about has the capability of doing a vendor catalog load; isn't

18 that right?

19 A   It has the capability of loading items that were provided

20 by a vendor into the item master.

21 Q   It has the capability of doing a vendor catalog load;

22 isn't that right?

23 A   Well, there's a program called vendor catalog load that

24 can be used to upload items provided from a vendor.

25 Q   And it's called vendor catalog load?

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1 A   Yes, for certain vendors.

2 Q   I'd like to talk to you a little bit about the

3 requisitions module if we could.

4 A   Okay.

5 Q   That's part of the core three modules we talked about for

6 the S3 procurement product; right?

7 A   Yes.

8 Q   Isn't it true that more often than not Lawson's customers

9 in the public sector have some sort of requisition module or

10 application they've acquired from Lawson?

11 A   I believe that's correct.

12 Q   Let's talk a little bit about requisition self-service for

13 a moment if we could, sir. Would it be fair to say that the

14 requisition self-service application is intended to be

15 user-friendly?

16 A   That is the intent.

17 Q   That's one of its goals; right?

18 A   Yes.

19 Q   This requisition self-service application that Lawson

20 offers, that provides the ability of hundreds, perhaps even

21 thousands of individuals at a customer to have access to this

22 procurement capability at their desktop or laptop PC; correct?

23 A   Yes, for the requisitioning capability.

24 Q   Isn't it, in fact, how Lawson markets this requisition

25 self-service application, by saying, in effect, you can now

1011

1 distribute that capability to many of your employees to have

2 the ability to search for matching items, build requisitions,

3 and generate multiple purchase orders; correct?

4 A   We market it as a way for them to search those items and

5 create requisitions.

6 Q   And then you need the other modules in order to do the --

7 generate the requisition and purchase orders and complete the

8 transaction; correct?

9 A   Right. You need the purchase order to generate the

10 purchase.

11   THE COURT: Excuse me just a minute. If a vendor

12 with whom the customer has a need to interact has a large list

13 of items, and each one of these people over here of these

14 tables, the lawyers, they are different customers or different

15 employees of the customer, could Mr. Carr, one of those people

16 over here, have one segment of the vendor items available to

17 him because he's in department A, and Mr. McDonald have another

18 segment of the same vendor's items but not the same ones

19 because he's in department B, et cetera? Could that be done in

20 this system?

21   THE WITNESS: In that example, we would load all the

22 items into the item master, and then certain departments, you

23 may restrict who has access to certain items in the item master

24 so that an individual in a particular department may not be

25 able to buy, say, computers, for example. So you could set

1012

1 that up to one user --

2   THE COURT: Okay. Excuse me. Go ahead.

3 Q   All right. So I'm clear on this, this requisition

4 self-service application differs from the requisition module in

5 it's more of a widespread application that can be used by

6 multiple users as opposed to the requisitions module in which

7 typically the requisitions department is authorized to make

8 purchases and not all these other employees?

9 A   Requisition self-service is designed to be available

10 through a web browser and available to more people.

11 Q   Now, you call some of these things modules and some of

12 these things applications, but really that's terminology you

13 just use in the way you market it; isn't that right?

14 A   It's terminology from the marketing, how we market and

15 sell it.

16 Q   It's still software; right?

17 A   Still software, yes.

18 Q   One of the things you can do with this requisition

19 self-service application is you can click on a drop-down menu

20 for find/shop to specify to search a catalog; isn't that right?

21 A   It's a find/shop search catalog.

22 Q   Requisition self-service has that capability; right?

23 A   Yes, it has that drop-down menu.

24 Q   And a user can also input keywords into a search box in

25 this requisition self-service application and the user

1013

1 interface to locate products; isn't that right?

2 A   Yes, they can.

3 Q   You have some familiarity with a standard known as the

4 universal standard products and services classification code,

5 also known as the UNSPSC code; correct?

6 A   Yes.

7 Q   And the UNSPSC code can be assigned to items in the Lawson

8 procurement suite and used in a way to navigate in this

9 requisition self-service application we've been talking about;

10 isn't that right?

11 A   Yes.

12 Q   And so this -- actually where is the UNSPSC load for

13 inputting that data? How do you do that?

14 A   For importing the UNSPSC code?

15 Q   Classification codes.

16 A   Okay. So all the commodity structure, so all the codes

17 and the hierarchy are loaded into inventory control.

18 Q   Inventory control module has the capability to load that

19 as offered; right?

20 A   Yes.

21 Q   So out of the box, inventory control module, one of these

22 core modules that make up this S3 product we've talking about

23 has that capability to get those UNSPSC classification codes

24 right into it; right?

25 A   Yes.

1018

1 THE COURT: Is or is not?

2 MR. ROBERTSON: Is not.

3 Q   It's part of a foundational software on which the S3 core

4 software exists in any of these other applications; correct?

5 A   Yes. Part of our core technology.

6 Q   To use punchout, procurement punchout, excuse me, it's

7 necessary to have this process flow; correct?

8 A   No.

9 THE COURT: Process flow is part of the core

10 technology; is that what you said?

11 THE WITNESS: Yes.

12 THE COURT: Is the core technology necessary to use

13 procurement punchout?

14 THE WITNESS: Um, so the core technology, it's

15 included. People will get process flow when they get the core

16 technology. Process flow is only used if you want to send XML

17 purchase orders from procurement punchout. So if customers

18 aren't sending XML purchase orders, they don't need process

19 flow.

20 Q   If they are, they do need process flow?

21 A   They do need process flow.

22 THE COURT: What is XML?

23 THE WITNESS: XML is a type of document format. It

24 stands for extended markup language, so it's an electronic file

25 format.

1019

1 Q   The Lawson system foundation is part of the core

2 technology, correct, in order to have procurement operate,

3 functional?

4 A   Yes.

5 Q   Let's talk a little about this punchout part of the

6 program if we could. In order to assist Lawson's customers

7 with obtaining vendor information with respect to items that

8 are being offered for sale, Lawson establishes partnerships

9 with third-party vendors such that the Lawson system can punch

10 out to those vendors; isn't that right?

11 A   Sorry, could you repeat that, the question?

12 Q   In order to assist its customers with obtaining vendor

13 information with respect to items that are being offered for

14 sale, Lawson established partnerships with third-party vendors?

15 A   Yes, we've established partnerships for punchout to assure

16 that people can punch out to those vendors' websites.

17 Q   And Lawson refers to these third-party vendors as punchout

18 partners; correct?

19 A   We refer to them as punchout trading partners.

20 Q   And Lawson enters into agreements with some of these

21 Punchout trading partners; correct?

22 A   Yes.

23 Q   Others you have long-standing relationships with?

24 A   Sorry?

25 Q   Other of these punchout trading partners you have

1020

1 long-standing relationships with; right?

2 A   Right. Others have been supported for a number of years.

3 THE COURT: Excuse me just a second. Earlier I

4 thought you said, and I'm not suggesting that you said anything

5 deliberately at odds or even maybe not at odds at all, so I'm

6 asking the question.

7 I thought you said that the customers, Lawson's

8 customers had to execute the contracts with the trading

9 partners, the punchout partners, and then you just said that

10 Lawson has contracts with the trading, punchout trading

11 partners. Are there two different contracts that are involved?

12 THE WITNESS: Yes, sir. There are two different

13 contracts that are involved.

14 THE COURT: What does the contract between Lawson and

15 the punchout partner, basically what does it arrange for?

16 THE WITNESS: It arranged for the testing of the

17 communication between procurement punchout and the vendor's

18 maintained website. We make sure there's really the handshake

19 so that if a customer wants to use our software with that third

20 party, we'll test it to make sure that it works and that when

21 they check out, that the items they've selected were able to

22 bring them back into our software, and so it covers that

23 initial testing and then ongoing maintenance of that.

24 THE COURT: And then the customer's contract with the

25 punchout partner, what generally does it cover?

1021

1 THE WITNESS: So the customers are contracting with

2 those vendors to buy goods and services from them, so they go

3 and negotiate that they're going to purchase from them, any

4 contract, any contracted prices as well. So they are

5 establishing that business relationship for the purchase of

6 products.

7 THE COURT: So basically if I'm doing something

8 through punchout, I go establish a purchase arrangement

9 contract with them, and then I can go in and order, and I can

10 put in what I need and it gets dealt with pursuant to that

11 contract; is that what happens?

12 THE WITNESS: Yes.

13 THE COURT: It obligates me to pay for it and then to

14 send it and et cetera, whatever the contract says; right?

15 THE WITNESS: Yes.

16 THE COURT: Your role in it is to set up the whole

17 process so I, as your customer, can do that, and that has to be

18 done in part by using -- by making sure there's an interconnect

19 between my system, your customer's system, and the punchout

20 partner system?

21 THE WITNESS: Yes. We're making sure that if our

22 customer wants to try it, technically it works.

23 THE COURT: All right.

24 Q   So you indicated that Lawson enters into these punchout

25 trading partner agreements, but if the customer says, I want to

1022

1 be -- I have a relationship with Dell and Hewlett-Packard and
2 Compaq and IBM, Staples, Office Max, Office Depot, and I want
3 you to facilitate and set up those communication protocols you
4 talked about, that handshake I think you referred to it, Lawson
5 in fact does that; right?
6 A   If the customer --
7 Q   Can you answer that question fairly yes or no, sir?
8   THE COURT: Wait a minute. Do you understand the
9 question, Mr. Lohkamp?
10   THE WITNESS: If you could repeat the question.
11 Q   You mentioned these communication protocols, this
12 handshake I think is how you referred to it in response to the
13 Court's questions with regard to how these -- the relationships
14 are set out. The user tells Lawson which trading partners it
15 wants Lawson to create that communication with; isn't that
16 right?
17 A   If they've asked us to set it up as part of the services.
18 Q   If they want punchout partners, and you provided them with
19 this procurement punchout application and they come to you,
20 that's a service that you provide in order to make this
21 punchout capability work; isn't that right?
22 A   Yes, yes, we can provide the service.
23 Q   And, in fact, you do provide that service; right?
24 A   Yes, we do.
25 Q   And these punchout partners need to renew their agreements

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1 with Lawson annually; isn't that right?
2 A   For the ones we've signed agreements with, yes.
3 Q   And you also work with some punchout trading partners that
4 you haven't signed agreements with; is that right?
5 A   Yes.
6 Q   But you still have to set up these same communication
7 protocols notwithstanding that there's no formal written
8 agreement; right?
9 A   If the customer asks us to do it.
10 Q   And you'll do it?
11 A   Yes.
12 Q   And you have done it?
13 A   Yes.
14 Q   And in order to facilitate access to this punchout trading
15 partner item data, it's Lawson's services team that configures
16 within the procurement punchout application to make those
17 trading partners accessible to customers; isn't that right?
18 A   Yes, if the customer has asked us to do that.
19 Q   And customers ask you to do that, don't they?
20 A   Yes.
21 Q   And you do it, don't you?
22 A   Yes, we do.
23 Q   And this configuration that you're talking about, this
24 handshake involves setting up logging credentials and
25 information, other information in order to get to that

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1 particular vendor's site; isn't that right?
2 A   Yes.
3 Q   Forgive me if I've asked you this already, but when you do
4 this and you configure this and you provide these credentials
5 and establish that handshake with a punchout trading partner at
6 the customer's request, Lawson charges a fee for that service;
7 is that right?
8 A   Yes, it does.
9 Q   And Lawson enters a statement of work with a trading
10 partner for this punchout implementation and configuration
11 services; isn't that right?
12 A   Sorry. Statement of work would be with the trading
13 partners; is that what you are asking?
14 Q   Yes.
15 A   We would do a statement of work for the initial testing as
16 part of the punchout partner agreement.
17 Q   And testing is essential in order to make sure this is
18 going to work for the customer; isn't that right?
19 A   To know that it works, yes.
20 Q   Lawson charges a fee for that?
21 A   Yes.
22   THE COURT: Charges who a fee, sir?
23   THE WITNESS: We charge the trading partner who wants
24 to sign up for our program.
25 Q   Can you turn to Plaintiff's Exhibit 104, please, sir.

1025

1 You've seen this document before; is that right?
2 A   Yes, I have.
3 Q   Indeed, you are the author of this document, aren't you,
4 sir?
5 A   Yes, I am.
6 Q   And as part as your job as product strategist at Lawson,
7 you were proposing a new punchout partner program; isn't that
8 right?
9 A   Yes, I was.
10   THE COURT: You mean you are the one who proposed
11 that it get into being in your company?
12   THE WITNESS: Yes, I proposed having a formal program
13 around this.
14 Q   Formal punchout partner program; right?
15 A   Yes, formal punchout partner program.
16 Q   That's the title of this document; correct?
17 A   Correct.
18 Q   And this formal punchout partner program was later adopted
19 at Lawson along similar lines as you laid out in this document;
20 isn't that right?
21 A   Yes, on similar lines.
22 Q   And there are certain program characteristics for this
23 punchout partner program that you outline for Lawson; isn't
24 that right?
25 A   Yes.

1034

1 agreement; right?

2 A   I was involved in some portions, mostly just around

3 reviewing some of the content as well as the benefits.

4 Q   Why don't we go to Plaintiff's Exhibit 191 if we could.

5 You've seen this document before; correct?

6 A   Correct.

7 Q   This services order form is part of the agreement between

8 Lawson and its punchout partners; isn't that right?

9 A   Yes, if they're going to do testing.

10 Q   Didn't I understand you to say before that when you set up

11 these communication protocols, that handshake, if you will, you

12 always do testing in order to determine that it's going to be

13 functional for the customer?

14 A   Yes. We do that testing.

15 Q   So to be sure, why don't we go to page three of the

16 documents which ends with the Bates label 591, and one of the

17 things to be provided here by a senior technical consultant as

18 a deliverable is punchout testing, internal testing and testing

19 with partner to validate cXML compliant punchout messages and

20 cXML order requests, purchase order; do you see that?

21 A   Yes, I do.

22 Q   And then upon successful completion of this testing,

23 Lawson updates its procurement punchout trading partner list;

24 is that right?

25 A   That's right.

1035

1 Q   And at the investment there over on the bottom right-hand

2 corner is the $2,000 you said is the fee that you charge for

3 that; right?

4 A   That's for this proposal, is $2,000.

5 Q   I thought -- I understood you to say that was the standard

6 fee.

7 A   Well, it's $2,000 a day for consultants depending upon how

8 much work it might take. This example is $2,000.

9 Q   That's all I have with respect to that document, sir. Now

10 I'd like to talk to you a little bit about some of the services

11 that Lawson provides to its S3 procurement customers.

12 A   Okay.

13 Q   One service that Lawson offers to its customers with

14 respect to this S3 procurement product is what are called

15 managed services; isn't that right?

16 A   Yes.

17 Q   You are familiar generally with the term known as hosting?

18 A   Yes, I am.

19 Q   And hosting is part of these managed services; isn't that

20 right?

21 A   Yes, it can be part of managed services.

22 Q   Managed services, I infer from your answer, can include

23 more than just hosting; right?

24 A   Yes.

25 Q   And managed services, however, are a service that Lawson

1036

1 charges fees to its customers; correct?

2 A   Yes.

3 Q   And so some of these managed services could be

4 installation; correct?

5 A   Installation, my understanding, is separate from the

6 managed services.

7 Q   Would you consider those to be under consulting services?

8 A   Yes, I would.

9 Q   So do you charge for those consulting services as well?

10 A   Yes.

11 Q   So installation falls in the consulting services bucket?

12 A   Yes, that's my understanding.

13 Q   Hosting falls within the managed services bucket?

14 A   I'm not sure exactly where that would fall.

15 Q   Wherever it falls, though, managed services is something

16 that Lawson provides; correct?

17 A   Yes.

18 Q   There's also training which could include managed

19 services; is that right?

20 A   No, training is separate from managed services.

21 Q   Is that consulting services?

22 A   I think that -- I'm not 100 percent certain. I think it

23 falls under the consulting umbrella.

24 Q   Let's talk about these managed services where Lawson is

25 hosting, that is actually providing the system, making it

1037

1 available to the customer instead of having the customer having

2 the software operating on its own servers. You are familiar

3 with that; right?

4 A   Yes, to some degree.

5 Q   So where Lawson provides this managed or hosted

6 procurement capability, this service, the user is actually

7 accessing the Lawson system over the internet; isn't that

8 right?

9 A   Yes. They access that over a secured connection to the

10 hosting computers.

11 Q   Why do you want it to be secure?

12 A   So that other people don't have access to that data. You

13 only want our customers to be able to log in and access that

14 data.

15 Q   And so the customer doesn't actually have to have this

16 procurement software operating on its internal system, it just

17 accesses the system, a secure system that Lawson is operating

18 that makes it available so they can purchase items from

19 multiple vendors; isn't that right?

20 A   I'm not sure I completely understand the question. Could

21 you repeat that?

22 Q   Sure. Customers don't actually have to have the Lawson

23 software operating on its internal system, its servers; it can

24 just access the procurement system that Lawson is operating and

25 make that available to them so they can purchase items from

1038

1 multiple vendors?

2 A   Yes. Our customers don't have to have it operating on

3 their own servers. They can access a hosted set of procurement

4 applications.

5 Q   And they can perform these purchasing functions we've been

6 talking about for multiple vendors, can't they?

7 A   They can perform the purchasing functions and order from

8 multiple vendors.

9 Q   And this hosting operation that Lawson conducts also

10 includes procurement punchout; isn't that right?

11 A   It is an option for our customers to use procurement

12 punchout.

13 Q   So a customer might prefer to have Lawson host the

14 procurement software as opposed to having it on their own

15 system so they would not have to manage the servers or update

16 the applications; isn't that right?

17 A   That's right.

18 Q   One of the services Lawson provides with respect to this

19 S3 procurement product we've been talking about is

20 installation; is that right?

21 A   That's right.

22 Q   And you charge for installation, don't you?

23 A   Yes, we do.

24 Q   And isn't it true that Lawson's customers choose to have

25 Lawson consultants perform the installation or implementation

1039

1 of this S3 procurement product we've been talking about more

2 often than not?

3 A   I don't know for certain about that.

4 Q   Do you recall being asked that question in your

5 deposition?

6 A   I don't recall being asked that.

7 Q   Why don't we turn to your deposition which is the first

8 day, October 20, 2009, at page 103.

9   THE COURT: Page what?

10   MR. ROBERTSON: 103, Your Honor.

11 Q   You'll see starting at about line 13, a question was

12 asked, if I'm a customer and I'm having a supply chain

13 management solution installed or implemented, it's your

14 understanding that there's a revenue stream that is associated

15 specifically for that service that can be attributable to, for

16 example, supply chain management if that's the product I'm

17 getting.

18   MS. STOLL-DeBELL: Can you tell me where you are?

19   THE COURT: 103 starting at line ten -- I mean line

20 13, and it's the first part of the deposition, the first day.

21 Q   This was a preliminary question, and your answer was, yes,

22 if they choose Lawson consultants to do the work.

23   My next question was, let's just -- focusing on supply

24 chain management licensing for now, you indicated in your last

25 answer there's a revenue associated with the installation of

1040

1 that product if they choose Lawson. Can you tell me in your

2 experience what percentage of Lawson's customers who are

3 implementing a supply chain management solution select Lawson

4 to do -- conduct that implementation or installation, and your

5 answer, I don't know that percentage.

6   My follow-up question was, is it more often than not.

7 Your answer was, yes. Did I read that correctly?

8 A   Yes, you did.

9 Q   Okay. Thank you. Lawson also charges for the service of

10 transferring item data from what's called a legacy system into

11 the Lawson S3 procurement system; isn't that right?

12 A   Yes.

13 Q   And from time to time, Lawson consultants actually visit

14 with customers to conduct training sessions for this S3

15 product; right?

16 A   Yes.

17 Q   And Lawson charges fees for that service as well; right?

18 A   Yes.

19 Q   And Lawson provides learning tools to its customers with

20 respect to its S3 procurement product; correct?

21 A   Yes.

22 Q   One of these learning tools is an online classroom

23 training for its customers; right?

24 A   Yes.

25 Q   Let's talk a little bit about maintenance as a service.

1041

1 If a Lawson user is having a problem with their particular

2 product and they want to go and access a guide that might

3 assist them in working out some of their issues, does Lawson

4 make that type of assistance available to its customers online?

5 A   Yes.

6 Q   And Lawson charges for that type of service as well;

7 correct?

8 A   The charge is part of the maintenance agreement.

9 Q   Does everyone need a maintenance agreement when they

10 license these products?

11 A   Yes, if they want to have updates.

12 Q   By updates, you mean periodically the product may have new

13 features or functionalities or fixes of bugs in the system, and

14 Lawson provides those upgrades for a fee as part of

15 maintenance; is that right?

16 A   We provide that -- as part of their maintenance agreement,

17 they get the fixes and the upgrades.

18 Q   So as part of the maintenance agreement, everybody gets

19 these upgrades; right?

20 A   For the products they own, yes.

21 Q   That's why they have to pay the maintenance fee?

22 A   Yes.

23 Q   And the maintenance fee, just to be clear, is separate

24 from the licensing fee for actually getting the software;

25 right?

1042

1 A   Yes.

2 Q   And the services, those fees, they are separate from the

3 maintenance fee; right?

4 A   Yes, they are.

5 Q   Lawson enjoys revenues from both licensing, maintenance,

6 and from servicing; correct?

7 A   Correct.

8 Q   Of those three categories of revenues that Lawson enjoys

9 proceeds, payments, licensing is, in fact, the smallest; isn't

10 it?

11 A   I'm not a hundred percent sure. I think it is.

12 Q   So -- let's -- are you sure of this: If I add services

13 and maintenance, in every instance that's going to be larger

14 than the licensing fee?

15 A   Every time an individual customer or for Lawson as a

16 company as a whole? I want to make sure I understand what you

17 are asking.

18 Q   Let me clarify. Let's talk about first Lawson as a

19 company as a whole for all of its software solutions.

20 Maintenance and servicing revenues together are always larger

21 than licensing revenues for the company as a whole; correct?

22 A   That's my understanding, yes.

23 Q   For this S3 procurement application we're talking about,

24 the same holds true; right?

25 A   Yes.

1043

1 Q   Just so I'm clear, everybody who licenses this also has to

2 enter into a maintenance service agreement with Lawson as well.

3 When I say "this," I mean the S3 procurement product we're

4 talking about?

5 A   And you're asking when they initially sign their

6 contracts?

7 Q   Yes.

8 A   Yes.

9 Q   Do they have to periodically, from time to time, pay

10 updated maintenance fees?

11 A   Periodically they have to renew their maintenance, and it

12 could go up or change.

13 Q   Does everybody have to enter into a services contract with

14 Lawson?

15 A   No.

16 Q   What percentage of the customers involved in this S3

17 procurement product do enter into service agreements?

18 A   I don't know that percentage.

19 Q   More than half?

20 A   I said at my deposition it's more often than not.

21 Q   Let's talk a little about this process that involve

22 request for proposals. You are familiar with those; right, Mr.

23 Lohkamp?

24 A   Yes, I am.

25 Q   From time to time, Lawson's called upon to provide

1044

1 responses to specific questions in a request for a proposal

2 from an existing or potential new customer; isn't that right?

3 A   Yes, I'm sometimes called upon to provide answers.

4 Q   And we've discussed -- I think the jury has a general

5 understanding as to what RFPs are.

6 A   Okay.

7 Q   But just so we're clear, you understand them to be a

8 series of questions the customer may be asking about the

9 capability of a particular product; correct?

10 A   Yes.

11 Q   And you are involved in that RFP process at Lawson; is

12 that right?

13 A   Only when in certain situations where I'm asked specific

14 questions. I'm not involved on a day-to-day basis.

15 Q   But you have been involved in the RFP process where people

16 come to you and ask you specific questions; is that right?

17 A   Yes.

18 Q   Your role is typically to help answer these RFP questions

19 that the salesperson at Lawson are unable to answer; isn't that

20 right?

21 A   Yes.

22 Q   And in many instances, persons who answer those questions

23 are account executives or solutions consultant, and they

24 provide the content for the responses to the RFPs; isn't that

25 right?

1045

1 A   That's my understanding, yes.

2 Q   But you work with the account executives and solution

3 consultants in providing that content; right?

4 A   Are you asking specifically for those RFPs?

5 Q   Yes.

6 A   So only when I'm requested for those particular questions.

7 Q   But when you are asked, you assist in the process;

8 correct?

9 A   Yes, I do.

10 Q   And you've reviewed those responses and provided guidance

11 on how to answer those questions; correct?

12 A   For the questions I'm asked to review or respond to.

13 Q   When you do that, you are attempting to provide the most

14 accurate information possible in responding to the questions;

15 correct?

16 A   Yes, I'm trying to provide accurate information.

17   MR. ROBERTSON: Your Honor, may I have a minute? I

18 had a section of my outline here that I believe I left over on

19 the table which I believe would be appropriate at this point.

20 See if I can lay my hands on it. I apologize.

21   Your Honor, this might take a minute. May I ask the

22 Court for a short indulgence in order --

23   THE COURT: We'll take the morning recess now, ladies

24 and gentlemen. We'll have 20 minutes.

25   MR. ROBERTSON: Thank you, Your Honor.

1046

1 THE COURT: Have they already gotten their menus back
2 there?
3 THE CLERK: They've already filled them out
4 downstairs.
5 THE COURT: We won't subject you to the elements in
6 order to eat today. All right, please take your note pads with
7 you.
8
9 (Jury out.)
10
11 THE COURT: Maybe it edited itself out.
12 MR. ROBERTSON: I'm sorry, sir?
13 THE COURT: Maybe it edited itself out. How much
14 longer do you have with this witness assuming you can find that
15 piece that edited itself out?
16 MR. ROBERTSON: I think probably about 45 minutes,
17 Your Honor.
18 THE COURT: 45 minutes more. You're not moving along
19 at a pace that will allow us to finish today given the other
20 testimony that you told me you were going to have.
21 MR. ROBERTSON: Yes, Your Honor. And to be fair, I
22 didn't represent that I thought we were going to finish today.
23 I don't think --
24 THE COURT: To be fair, I thought you did, because I
25 told him to have his people here based on what you told me. So

1047

1 maybe I misunderstand, but don't be planning on extending this.
2 The curtains will have to come down here at sometime.
3 MR. ROBERTSON: I understand, Your Honor.
4 THE COURT: We're doing a lot of repetition. So
5 maybe you can hone it down.
6 MR. ROBERTSON: I'll try that, Your Honor.
7 THE COURT: I notice this morning we have gone the
8 one hour and a half, approximately, without any cough at all,
9 and I think that's a very good thing. All right, we'll be in
10 recess.
11
12 (Recess taken.)
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1048

1 (The jury is present.)
2 THE COURT: All right.
3 BY MR. ROBERTSON:
4 Q Mr. Lohkamp, I just want to get back to that
5 question I was asking you about that hosting service
6 that is Lawson will provide. The hosting of that is
7 at a Lawson facility; is that correct?
8 A My understanding is it's at a third party
9 facility.
10 Q A third party facility that is being leased by
11 Lawson for hosting those servers that have the
12 operational software?
13 A We are leasing space at the third party hosting
14 site.
15 Q It's Lawson's servers that are operating the
16 hosting service?
17 A I don't know exactly how that's structured.
18 Q You have a rather large binder next to you right
19 there on the left-hand corner of the table. That's
20 Plaintiffs' Exhibit No. 118. I just want to ask you a
21 few questions about that, if we could.
22 If you will flip through quickly, you will see
23 that that binder is just one Lawson response to a
24 request for a proposal for Cherry Creek Schools; do
25 you see that?

1049

LOHKAMP - DIRECT   1049
1 A Yes, yes.
2 Q This is a Lawson authored document?
3 A It looks like it is, yes.
4 Q And there's an executive summary at page 7 of the
5 document, Section 1.0, ends with Bates label 173.
6 Page 7 is identified in the lower left-hand corner.
7 A Yes.
8 Q One of the software solutions that Cherry Creek
9 School is seeking, you'll see in that first paragraph,
10 is to include the ability to conduct business online
11 with vendors and other partners. The school wants to
12 have procurement activities and resources available
13 there. Do you see that?
14 A Yes, I see that.
15 Q That would be part of the procurement solutions
16 we've been talking about; is that right?
17 A That's what I would interpret, yes.
18 Q If you'll turn to the page that is page 27495 and
19 ends with Bates label 193. There's a heading
20 entitled, Custom catalogs. Do you see that?
21 A Yes, I see that.
22 Q Under that heading it says, Individual department
23 and users can establish custom catalogs that reflect
24 their unique ordering patterns. Do you see that?
25 A Yes, I do.

1050

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1   Q   Next sentence that Lawson is representing to this
2   potential customer is that, Furthermore, you can
3   establish catalogs for certain days of the week by
4   item classification, vendor or other criteria. Did I
5   read that correctly?
6   A   Yes, you did.
7   Q   That's a representation that Lawson was making to
8   this school district?
9   A   Yes.
10   Q   I want you to turn to page 179 of this document,
11   and there's a heading there called "functional
12   catagory purchasing." Do you see that?
13   A   I'm just flipping to it, sir.
14   Q   Are you with me now?
15   A   I am.
16   Q   There's a legend there for certain things that are
17   provided by Lawson or are provided by third parties or
18   whether some people require some configuration, etc.
19   Do you see that?
20   A   Yes.
21   Q   Lawson represent there that when they use the term
22   "F," that the functionality is fully provided out of
23   the box. Do you see that?
24   A   Yes.
25   Q   And you'll see below there there's a table that

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1   has certain headings including a reference number and
2   functional requirements. Do you see that?
3   A   Yes.
4   Q   And the third column has a response.
5   A   Yes.
6   Q   And under that response, for example, for the
7   reference No. PO 1.00, the response would be F, right?
8   So that means that the Lawson purchasing of the
9   procurement solution they are offering here, for
10   example, would have that capability fully provided out
11   of the box. Is that how you would understand this
12   table?
13   A   Yes, that's what the response means.
14   Q   If you would turn to page that ends 192, which is
15   Bates label 9358. There's a question from the school
16   district at PO 161 on that page. Do you see that?
17   A   Yes.
18   Q   So the school district is asking Lawson for this
19   procurement solution whether it has the ability to
20   generate various catalogs, including vendor catalogs,
21   stockroom catalogs, textbook catalogs or food service
22   catalogs in print and online. Do you see that?
23   A   Yes.
24   Q   And lawson indicated that that capability was
25   fully provided out of the box, correct?

1052

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1   A   Yes, we answered F.
2   Q   That's all I have of that document, sir.
3   I'd like you to go to Exhibit No. 215 now if I
4   could, plaintiff's exhibit.
5   A   I'm sorry?
6   THE COURT: It's not in the notebook, is it?
7   MR. ROBERTSON: No, Your Honor. That was my
8   mistake, but he does have it now.
9   Q   Well, do you have Plaintiff's Exhibit No. 215 now,
10   sir?
11   A   Yes.
12   Q   Now, again, this is a Lawson authored document,
13   correct?
14   A   Yes, it looks like it.
15   Q   And it looks like it's a response to Jackson
16   Health Care System; correct?
17   A   Yes.
18   Q   And if you'd go to the executive summary again,
19   there's a mention of Lawson's ERP systems, which
20   include this procurement software we've been talking
21   about, correct? That falls under the heading of
22   electronic -- what's called enterprise resource
23   planning solutions?
24   A   Yes. ERP would include purchasing.
25   Q   If you go to the page that ends with the Bates

1053

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1   label No. 149, sir. I'm sorry. It's the page that's
2   at the left-hand corner ends with 149. It ends with
3   the Bates label 171. And again, in this table in the
4   left column is a heading called functional capability.
5   Do you see that?
6   A   Yes.
7   Q   Then there's another heading that, says currently
8   "available." And then there's another heading that
9   says "currently not available." And then there's a
10   heading that says "attachment." Do you see that?
11   A   Yes, I do.
12   Q   And if you go down to the column with the heading
13   9 G commodity management functions?
14   A   Yes.
15   Q   The second question there says, Does the system
16   support generic and vendor catalogs with sub
17   categories of inventory and stockless items? Do you
18   see that?
19   A   Yes, I do.
20   Q   What did Lawson indicate about whether its system
21   had that capability?
22   A   It indicated yes.
23   Q   Two lines down, sir, from that you'll see a
24   heading under "commodity management functions,"
25   support X12832, electronic price catalog data from

1054

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1 vendors to the JHS item catalogs with updates to
2 existing items only. Do you see that?
3 A Yes.
4 Q JHS is this Jackson Health System, a potential
5 customer, right?
6 A I believe that's what it stands for.
7 Q What did Lawson represent to Jackson Health System
8 with respect to whether its procurement system had
9 that capability?
10 A Yes.
11 Q The next line down says, "Ability to update our
12 catalogs with external vendor provided files." Do you
13 see that?
14 A Yes.
15 Q What did Lawson represent to the Jackson Health
16 Care system as to its procurement software capability?
17 A We indicated yes.
18 Q If you'll turn to the next page still under this
19 functional capability column, there's a subheading
20 there that says, "Expanded item searched by," do you
21 see that?
22 A Yes.
23 Q With respect to whether or not the Lawson
24 procurement solution offered to Jackson Health System
25 had the ability to do a search by vendor catalog

1055

LOHKAMP - DIRECT   1055

1 number, what did Lawson answer?
2 A Yes.
3 Q What did Lawson answer when it was asked whether
4 it could do a search by a hospital specific code?
5 A Yes.
6 Q What did Lawson answer when it was asked whether
7 it could do a partial description of an item, for
8 example, wild card, contains, etc.?
9 A We answered yes.
10 Q What did Lawson answer when it was asked by this
11 health system whether or not it could do searches by
12 manufacturer catalog number?
13 A We answered yes.
14 Q What did Lawson answer when it was asked whether
15 it could search by classification code?
16 A We answered yes.
17 Q What did Lawson answer when it was asked whether
18 it could search by a vendor name?
19 A We answered yes.
20 Q What did Lawson answer when it was asked whether
21 it could search by a manufacturer's name?
22 A We answered yes.
23 Q The next category said whether or not it could
24 answer questions with respect to item availability.
25 Do you see that where it says, "currently available"?

1056

LOHKAMP - DIRECT   1056

1 A What section?
2 Q Actually, that's all I have with respect to that
3 document sir.
4 A All right.
5 Q Thank you. Do you have Plaintiff's Exhibit 149 up
6 there?
7 A Here it is.
8   THE COURT: It's not in his book either.
9   MR. ROBERTSON: He has it now, Your Honor, in
10 his book.
11 Q This is another response to a request for
12 information, isn't it, by the Holland Hospital?
13 A Yes.
14 Q It's a Lawson authored document?
15 A It appears so.
16 Q And let me just go right to it. There's some
17 questions about functional requirements for
18 procurement solutions being discussed by Lawson in
19 this document. This is at the page that ends with the
20 Bates label 58. I'm sorry. It's page 58 of 91, and
21 it has the Bates label ending 796.
22 A Okay.
23 Q I apologize. I've directed you to the wrong page.
24 It's 149 and it's at page 29. So let's start over, if
25 we could. I apologize, Mr. Lohkamp.

1057

LOHKAMP - DIRECT   1057

1   There's a heading there for material
2 requirements -- excuse me. Materials requirements.
3 Then there's a subheading "inventory control," do you
4 see that?
5 A Yes.
6 Q Could you read out loud No. 10 for the jury?
7 A "Ability to produce supply catalogs by item
8 number, manufacturer, vendor, class, inventory
9 location."
10 Q And there's a response key at the top. Do you see
11 that?
12 A Yes.
13 Q What does Lawson represent that A means?
14 A Available/install.
15 Q If you will go back to page 21 of 91, and there is
16 instructions for the application of functional
17 requirement questions there?
18 A Yes.
19 Q So you have already identified that have A means
20 available and currently installed. Underneath that
21 there's a rating column.
22 A Okay.
23 Q It says, For each requirement listed, rate the
24 application's performance on a scale from 0 to 7, with
25 0 indicating no performance to 7 indicating leading

1062

LOHKAMP - DIRECT   1062

1 order form that modifies a statement of work for

2 Community Medical Centers.

3 Q What's a change order form modifying statement of

4 work? Does that mean the statement of work has been

5 modified in some way?

6 A Yeah. My understanding of what a change order

7 form is someone is requesting a change to the services

8 we provide.

9 Q What is the next document in that binder?

10 A It's PX 501 L. And it's a statement of work for

11 Deaconess Health System.

12 Q Can you go to the next one?

13 A The next one is PX 501 M, and it's the master

14 terms and conditions, Lawson Software and user

15 agreement.

16 Q What's the next document?

17 A That's the last one in this binder. Should I go

18 to the next binder?

19 Q All right. Sorry, sir. What's the first document

20 in there?

21 A In this first binder?

22 Q No, in the second binder.

23 A I haven't got that. Sorry. It's PX 501 N. And

24 the first page is a sales and use tax certification of

25 exemption.

1063

LOHKAMP - DIRECT   1063

1 Q What's the next page?

2 A The next page is a services turnover document.

3 Q Okay. Next page?

4 A It's a services order form for Holland Hospital.

5 Q What's the exhibit number for that one, sir?

6 A This one is PX 501 N.

7 Q Services order form, is that the order form for

8 the services that Lawson is going to be providing to

9 Holland Hospital?

10 A Yes, it is.

11 Q What's the next document, sir?

12 A The next document is PX 501 R, and it states,

13 "Server sizing estimate for Owensboro Medical Health

14 System."

15 Q Can you turn to the page where it indicates it's

16 going to be a contract for services provided?

17 A The next page is "What is a server sizing

18 estimate?"

19 Q What about the next page?

20 A "Parameters overview." It's still part of the

21 sizing.

22 Q Next page, sir?

23 A "Proposed architecture."

24   THE COURT: Interesting, but not useful.

25 What are we doing? These exhibits are in.

1064

LOHKAMP - DIRECT   1064

1   MR. ROBERTSON: Well, Your Honor, I'd like to

2 offer what we had discussed before was is a Federal

3 Rule of Evidence 1006 summary of the documentation.

4 We've provided it to the defendant, and I believe with

5 one modification it was not objected to. It's

6 Plaintiff's Exhibit 516.

7   THE COURT: Any objections to Plaintiff's

8 Exhibit 516?

9   MS. STOLL-DeBELL: No, Your Honor.

10   THE COURT: What is it?

11   MR. ROBERTSON: What is it? I'm sorry, Your

12 Honor?

13   THE COURT: Summary of what?

14   MR. ROBERTSON: Of these contracts and what,

15 in fact, the software applications and modules that

16 were licensed, the involvement and the implementation

17 of those, and the various customers and information

18 detailing what the implementation was and what the

19 particular applications or modules were that were

20 licensed.

21   THE COURT: And there's no objection to PX

22 516. It's admitted.

23   (Plaintiff's Exhibit 516 is admitted into

24 evidence.)

25   THE COURT: And all of the PX 501s are

1065

LOHKAMP - DIRECT   1065

1 admitted, aren't they?

2   All right. Let's go.

3 BY MR. ROBERTSON:

4 Q I'd like to talk to you, sir, a little bit about

5 some industry analyst reports and publications that

6 you review as part of your job as product strategist.

7 All right?

8   So in your role as a product strategist, you have

9 had occasion to review industry analyst reports; is

10 that right?

11 A That is correct.

12 Q Among the industry analyst reports you review on

13 occasion is Gartner, correct?

14 A Correct.

15 Q And you also review industry analyst reports from

16 Aberdeen; is that right?

17 A Yes, I do.

18 Q These are industry analyst reports that often

19 refer to products that were within your

20 responsibilities at the company including procurement,

21 right?

22 A Yes.

23 Q And you have also reviewed industry analyst

24 reports from Forester; is that right?

25 A Yes, I have.

1066

LOHKAMP - DIRECT   1066

1 Q Particularly, in the procurement area; is that

2 correct?

3 A Yes, I have.

4 Q And for procurement industry, you have also looked

5 at analyst reports from AMR; is that right?

6 A Yes.

7 Q And you have also looked at analyst reports from

8 an outfit known as VDC; is that right?

9 A That's correct.

10 Q And Lawson reviews and sometimes relies on the

11 information provided in those industry analyst reports

12 for making its own internal decision; isn't that

13 right?

14 A Yes, we sometimes lavish those into our planning.

15 Q Isn't it true that you provide information

16 concerning Lawson's products including procurement

17 products in the supply chain management industry to

18 those analyst reports?

19 A Yes, I do.

20 Q And part of your duties as a product strategist

21 for Lawson is to speak with these industry analysts

22 about the procurement solutions like S3 offered by

23 Lawson; isn't that right?

24 A Yes, it is.

25 Q And among the industry analysts that you speak

1067

LOHKAMP - DIRECT   1067

1 with in your role as a product strategist is Garter,

2 correct?

3 A Yes.

4 Q And Forester?

5 A Yes.

6 Q Aberdeen?

7 A Yes, Aberdeen.

8 Q VDC?

9 A Yes.

10 Q AMR?

11 A Yes.

12 Q And you use these industry analyst reports to

13 provide Lawson with intelligence with respect to

14 market trends; isn't that right?

15 A Some of the reports I do use for that.

16 Q What are the ones you find most reliable, sir?

17 A Gartner is one of the more reliable ones.

18 Q And you have a personal subscription to one of

19 more of these publications; isn't that right?

20 A I have a personal subscription to AMR, but then it

21 converted into Gartner when they were purchased.

22 Q But the ones you use most are Gartner and

23 Forester; isn't that right?

24 A Gartner, Forester and AMR.

25 Q Now, outside of these industry analyst reports,

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LOHKAMP - DIRECT   1068

1 you also keep abreast of trends and developments in

2 the supply chain management industry, right?

3 A I try to.

4 Q So if there are any mainstream periodicals or news

5 services that are discussing the procurement sphere,

6 for example, you try to pay attention to those as part

7 of your job responsibilities?

8 A I certainly pay attention to certain publications.

9 Q What would those be outside of the analyst reports

10 we've talked about?

11 A I follow Health Care Purchasing News, Materials

12 Management and Health Care. I also get emails from IT

13 Toolbox. I also get emails from Supply Chain

14 Management Review. So those are some of the key

15 publications I look at.

16 Q How about just general news publications,

17 newspapers, that kind of thing? If they have articles

18 of interest involving electronic procurement, do you

19 keep abreast press of them?

20 A If I see the articles, I would read them.

21 Q Let's talk a little bit now about your knowledge

22 of ePlus, if we can.

23 A Okay.

24 Q Isn't it true that you knew of ePlus prior to the

25 filing of this lawsuit?

1069

LOHKAMP - DIRECT   1069

1 A Yes, I did.

2 Q And you initially became aware of ePlus at a

3 health association conference in 2003; isn't that

4 right?

5 A Yes.

6 Q Is that one of those conferences you were talking

7 about before where various companies go and have

8 booths in order to display the software solutions that

9 they have?

10 A That was an industry conference where they did

11 have booths set up for vendors.

12 Q You saw that ePlus had a booth set up there; is

13 that right?

14 A Yes, I did.

15 Q And you visited that booth; isn't that right, sir?

16 A I did stop by that booth.

17 Q And you recall that ePlus was exhibiting product

18 offerings in procurement relating to catalogs; isn't

19 that right.

20 A Yes, I recall they had software related to

21 catalogs.

22 Q And it's also true that you're aware of ePlus

23 prior to the filing of this law suit by their listing

24 in the Forester e-Procurement Wave; isn't that right?

25 A I didn't recall seeing that, and I went back and

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LOHKAMP - DIRECT   1070

1 looked at that wave after the lawsuit had been filed.
2   THE COURT: The question is were you aware of
3 it from Forester's listing?
4   THE WITNESS: I did not recall seeing them in
5 the Forester listing. I went back and checked after
6 this to see if they were on that list.
7   THE COURT: Were they?
8   THE WITNESS: They were.
9   THE COURT: Did looking at that refresh your
10 knowledge about whether or not you knew about them
11 before the filing of the lawsuit?
12   THE WITNESS: I had the prior knowledge from
13 2003 when I ran across them, but I hadn't run across
14 them prior to the law suit except for where they came
15 up at a Cleveland Clinic where Cleveland Clinic was
16 looking between ePlus and Sciquest.
17   THE COURT: When was that?
18   THE WITNESS: I believe that was in
19 approximately 2008.
20 Q You're aware that the lawsuit was filed in May of
21 2009?
22 A Yes.
23 Q Isn't it true that prior to this lawsuit you had
24 also spoken to sales people at Lawson who had competed
25 with ePlus for business?

1071

LOHKAMP - DIRECT   1071

1 A The situation with Cleveland Clinic where they
2 were bidding for a portion of the business there.
3 Q How did you come to learn that ePlus was competing
4 for that customer?
5 A The solution consultant contacted me and said that
6 Cleveland Clinic, who was already a Lawson customer at
7 the time, was trying to decide between Sciquest and
8 ePlus for a catalog solution. They were expecting to
9 use Lawson's Punchouts to connect to whichever they
10 chose. So he was asking me about our Punchout
11 capability.
12 Q When you say "solution consultant," you're talking
13 about a Lawson salesperson, right?
14 A The Lawson salesperson who does the demos.
15 Q And that individual's name was Brett Weiss?
16 A That's correct.
17   THE COURT: You mentioned the name of some
18 other company; Science Quest or something.
19   THE WITNESS: Sciquest.
20   THE COURT: But his question was how did you
21 know about ePlus.
22   THE WITNESS: I knew about it from the
23 Cleveland Clinic. So, specifically, he was asking me
24 about the Cleveland Clinic opportunity. So the
25 solution consultant from Lawson called me and

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LOHKAMP - DIRECT   1072

1 explained that Cleveland Clinic was trying to
2 decide -- they were looking at Lawson's Punchout and
3 they were trying to decide between ePlus and Sciquest
4 in terms of catalog and content solution.
5 Q And Lawson was going to partner with Sciquest if
6 they got the bid for the Cleveland Clinic; isn't that
7 right?
8 A Yes.
9 Q And you mentioned that Forester e-Procurement Wave
10 that you reviewed in reference to ePlus, that was
11 published in 2007; is that right?
12 A I don't recall exactly when.
13 Q What is that actually?
14 A The Forester e-Procurement Wave is a report where
15 Forester goes out and interviews different software
16 companies, asks them about their capabilities, and
17 then scores and rates them and summarizes it.
18 Q Are you aware of other competition between ePlus
19 and Lawson?
20 A The only other one that I'm aware of is that of
21 Novant where ePlus was also vying for a portion of the
22 business.
23   MS. STOLL-DeBELL: Objection, Your Honor.
24 There's no foundation that there was any competition
25 between Lawson and ePlus at the Cleveland Clinic.

1073

LOHKAMP - DIRECT   1073

1   THE COURT: He just said there was. This
2 witness has provided that foundation.
3   MS. STOLL-DeBELL: I don't think so, Your
4 Honor.
5   THE COURT: Well, I'll let the jury decide
6 that. I heard what I heard. Overruled.
7   You're talking about something else now.
8 You're talking about ePlus in competition with
9 somebody else. Who was that?
10   MR. ROBERTSON: Your Honor, I'm asking --
11 Q You mentioned Novant. You're aware that ePlus was
12 in competition with Lawson for Novant; is that right?
13 A Well, I --
14 Q Can you answer that question fairly yes or no,
15 sir?
16 A I didn't think they were competing directly for
17 the business.
18 Q So you thought they were competing indirectly?
19 A I thought they were competing for a different
20 portion like the content side of it.
21 Q Let me ask you this, sir.
22   THE COURT: What is Novant?
23   MR. ROBERTSON: It's a medical center.
24   THE COURT: I'm asking the witness.
25   THE WITNESS: It's a health care center.

1074

LOHKAMP - DIRECT   1074

1   THE COURT: It's different from the Cleveland

2   Clinic?

3   THE WITNESS: Yes, it is.

4   THE COURT: You were aware that ePlus was

5   bidding for some component of Novant's business?

6   THE WITNESS: I was aware of it after the

7   fact when it was pointed out that they had been there.

8   Q   This RFP process, that's often done in secret.

9   And by that I mean been the person, the potential

10 customer, doesn't always inform the bidder who all the

11 other competition is; isn't that fair to say?

12 A   That's correct.

13 Q   And that's typical, isn't it?

14 A   It's typical for a lot of situations.

15 Q   Sometimes your sales people get intelligence that

16 there may be somebody else in competition, but other

17 times they are completely in the dark as to who the

18 competition might be; fair to say?

19 A   That does happen, yes.

20 Q   So when that happens Lawson, might not even know

21 it's competing with ePlus on a particular request for

22 a proposal; is that right?

23 A   It's possible that we wouldn't know if ePlus was

24 bidding for a business.

25 Q   But even if you didn't know and it's a fact then,

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LOHKAMP - DIRECT   1075

1   that competition is occurring, right? It doesn't turn

2   on whether you know or not know, right?

3   A   No, it doesn't.

4   MR. ROBERTSON: Thank you. I have no further

5   questions.

6

7   CROSS-EXAMINATION

8   BY MS. STOLL-DeBELL:

9   Q   Good morning, Mr. Lohkamp.

10 A   Good moaning.

11 Q   Let's start off first by talking about these

12 competition issues that you just talked about with

13 Mr. Robertson.

14   Can you explain to me who ePlus was competing with

15 for the Cleveland Clinic deal?

16 A   My understanding is they were competing against

17 Sciquest.

18 Q   Why is it your understanding that they were

19 competing against Sciquest?

20 A   Because when I spoke with the solution consultant,

21 Brett Weiss, he mentioned that Cleveland Clinic was

22 trying to decide between two solutions for catalog and

23 content, and they were trying to decide between

24 Sciquest and ePlus. They were looking to use Lawson

25 Software and Lawson procurement regardless to connect

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1   to whichever solution they were going to choose.

2   Q   So Lawson, had they selected ePlus, Lawson would

3   have been in a position that it was working with

4   ePlus?

5   MR. ROBERTSON: Objection, leading.

6   THE COURT: Overruled.

7   A   So if they had selected ePlus, we would have --

8   Cleveland Clinic would have been using Lawson, and we

9   would have been open to working with ePlus.

10 Q   And that was to use Lawson's Punchout product to

11 connect to some catalog product provided by ePlus?

12 A   That's what I would have expected was using

13 Punchouts to connect to ePlus.

14 Q   The same is true for Sciquest? It would be

15 Lawson's Punchout product to connect to some catalogs

16 provided by Sciquest?

17 A   Yes, Punchout is used to connect to Sciquest.

18 Q   So the customer wasn't actually making a decision

19 between whether to purchase something from Lawson

20 versus ePlus?

21 A   That's my understanding.

22 Q   Is that the same situation for Novant as well?

23 A   That would be my understanding.

24 Q   And the Novant situation, did you learn about that

25 as part of this lawsuit?

1077

1   A   Yes, I did.

2   Q   So not as part of your daily job duties as a

3   product strategist?

4   A   Not as part of my daily duties.

5   Q   Other than the Cleveland Clinic situation that you

6   just described for us, are you aware of any other

7   situation where ePlus has been bidding for the same

8   customer against Lawson?

9   A   Not in the course of my day-to-day activities.

10 Only the situations mentioned as part of this lawsuit.

11 Q   Who are Lawson's main competitors for supply chain

12 management products?

13   MR. ROBERTSON: Objection, Your Honor.

14 Outside the scope.

15   MS. STOLL-DeBELL: I think he talked about

16 competition and competition with ePlus, so I think it

17 is within the scope.

18   MR. ROBERTSON: I didn't ask anything about

19 any other outside competitors.

20   MS. STOLL-DeBELL: I still think it's within

21 the scope of who is Lawson's competition.

22   MR. ROBERTSON: It is, but that wasn't within

23 the scope of my questions and my examination.

24   MS. STOLL-DeBELL: I think his questions

25 related to competition, and I'm following up on that.

1146

Lohkamp - Cross   1146

1   THE COURT: Objection is to the form of the question.
2   There's no foundation for it. Sustained.
3   MS. STOLL-DeBELL: Your Honor, I was asking what
4   products Cleveland Clinic had of Lawson, whether they had
5   Lawson products.
6   THE COURT: You haven't established that he knew
7   whether Cleveland Clinic had any products yet. You have to
8   establish that foundation. The answer to that has to be yes,
9   and then you can see what products.
10 Q   Mr. Lohkamp, did Cleveland Clinic -- do you know whether
11 Cleveland Clinic had any Lawson products?
12 A   Yes.
13 Q   You do know?
14 A   Yes.
15 Q   What products did they have?
16 THE COURT: The next question is how do you know.
17 Q   How do you know?
18 A   I know because they were a customer of ours at the time
19 the bid came through.
20 Q   What products did they have?
21 MR. ROBERTSON: I'm sorry, Your Honor, but ^ the
22 foundation for how he knows they were a customer.
23 THE COURT: No, that's not the proper objection.
24 This is, I guess, evidence 101, but how did you find out what
25 products they had? Did you learn that from somebody else?

1147

1147

1   THE WITNESS: Yes --
2   THE COURT: Or do you have personal knowledge because
3   you sold them something, for example? Did you sell them any
4   products?
5   THE WITNESS: I did not.
6   THE COURT: Did you supervise in your line of
7   business any work that caused you to learn what products
8   Cleveland Clinic had at the time they are talking about?
9   THE WITNESS: I learned from the account executive.
10 THE COURT: Some account executive told you what the
11 products were; is that right?
12 THE WITNESS: Yes.
13 THE COURT: Sustained. That's why the Rules of
14 Evidence are as they are.
15 MS. STOLL-DeBELL: If I can have a minute to check my
16 notes, Your Honor.
17 THE COURT: All right.
18 MS. STOLL-DeBELL: I think that's it. Thank you.
19 Thank you.
20 THE COURT: Any redirect? Unfortunately, Mr.
21 Lohkamp, you may not be freed yet.
22 MR. ROBERTSON: Yes, Your Honor. I'll be brief.
23 THE COURT: Promises, promises.
24
25

1148

1148

1   REDIRECT EXAMINATION
2   BY MR. ROBERTSON:
3   Q   Could you go to that vendor agreement, please, Plaintiff's
4   Exhibit Number 113.
5   THE COURT: Number what?
6   MR. ROBERTSON: 113. I'm sorry, Your Honor, it was
7   190.
8   A   Okay.
9   Q   Are you with me yet, sir?
10 A   Yes, I am.
11 Q   You referred to various paragraphs in this agreement; is
12 that right?
13 A   I was asked about various paragraphs.
14 Q   I noticed one thing you weren't directed to is at the
15 bottom of page one under article two called intent of the
16 agreement; do you see that?
17 A   Yes.
18 Q   The intention of the parties to an agreement is a pretty
19 important thing; wouldn't you agree?
20 A   Yes.
21 Q   Okay. Let's see what you said here about what the intent
22 of this punchout partner agreement was. It's got two
23 intentions, doesn't it, identified there, small i and small ii?
24 A   Yes, it does.
25 Q   So it says, the intent of this agreement is to provide the

1149

Lohkamp - Redirect   1149

1   opportunity for the parties to -- now we're talking about the
2   parties there are Lawson and its punchout trading partner;
3   right? That's your understanding?
4   A   Yes.
5   Q   For the parties to facilitate the use of their respective
6   products by entering into a relationship that will
7   facilitate -- now, this is the first intent of the parties;
8   right? The development of the appropriate interfaces or
9   punchout between Lawson products and the partner's website; do
10 you see that?
11 A   Yes, I do.
12 Q   So the parties were going to jointly develop the
13 interfaces, the appropriate interfaces in order to do this
14 punchout between Lawson products and the partner website;
15 right? That's number one intention; correct?
16 A   Yes.
17 Q   Okay. Number two is the performance of joint marketing
18 activities; right? You use the word "joint" there; correct?
19 A   Correct.
20 Q   Now, paragraph three about this licensing ^ in sport all
21 it says here, each party shall contract for its own products
22 and services directly with the customers; do you see that?
23 A   (No response.)
24 Q   Your reference to that?
25 A   Yes.

1150

Lohkamp - Redirect   1150

1   Q   But the intent of this agreement then is not the
2   relationship that Lawson might have with its customer or the
3   punchout trading partner might have with its customer, the
4   intent of this agreement is how you formulate your joint
5   marketing activities for your mutual benefit; isn't that right?
6   A   It is for the joint agreement with them.
7   Q   To your mutual benefit, sir; right?
8   A   Yes.
9   Q   Lawson does specify the format for how the item data needs
10 to come back from the punchout catalog to the RSS shopping
11 cart; isn't that right?
12 A   We specify the format, the standard.
13 Q   So the answer to my question is yes; right?
14 A   Yes.
15 Q   And if the customer using the Lawson software wants to get
16 to a punchout trading partner website, whether they be under
17 agreement or not under agreement, it needs the Lawson punchout
18 application; isn't that right?
19 A   To use punchout to that vendor website.
20 Q   They can't get there without the procurement punchout
21 application; right?
22 A   Yeah. Using our software, yeah.
23 Q   That's how they do it?
24 A   Yes.
25 Q   You were asked questions about how many punchout products

1151

Lohkamp - Redirect   1151

1   you've sold. I think you said around a hundred, and you've got
2   about 3- or 400 RSS, or requisition self-services applications
3   ^ ; right? Now, if together the jury concludes that those
4   applications permit Lawson's customers to infringe the patents,
5   it's not an excuse for Lawson to say that we infringe just a
6   little bit, is it?
7   MS. STOLL-DeBELL: Objection, Your Honor. It calls
8   for a legal conclusion, and it's not relevant for this witness,
9   and it's prejudicial.
10   THE COURT: Because it's not relevant, it's
11 prejudicial.
12   MS. STOLL-DeBELL: Sure.
13   THE COURT: Sustained. It's a legal matter.
14 Q   You specified that a lot of your trading partners don't
15 use the vendor agreement that we've been referring to here as
16 Plaintiff's Exhibit Number 190; is that right?
17 A   That's correct.
18 Q   But the technology for punchout doesn't change for
19 Lawson's punchout trading partners whether they use the
20 agreement or don't use the agreement; isn't that right?
21 Technology is the same?
22 A   That's correct.
23 Q   You indicated that you were not aware of ePlus patents
24 prior to filing this lawsuit; is that right?
25 A   Yes.

1152

Lohkamp - Redirect   1152

1   Q   There's no question you've been aware of ePlus patents
2   since May of 2009 when the lawsuit was filed; right?
3   A   Right.
4   Q   Everyone at Lawson has been aware of the ePlus patent
5   since May of 2009; isn't that right?
6   A   I believe so.
7   MR. ROBERTSON: Thank you. No further questions.
8   THE COURT: All right. Mr. Lohkamp, it's obvious
9   you're going to be called back as a witness in the case, and
10 you can be temporarily excused and go about your business until
11 you are called back, and you agree to come back then?
12   THE WITNESS: Yes.
13   THE COURT: Or you can remain here and wait. Which
14 would you rather do, go about your business upon agreement to
15 come back?
16   THE WITNESS: Yes. Come back.
17   THE COURT: Is that satisfactory, counsel?
18   MS. STOLL-DeBELL: Yes, Your Honor.
19   THE COURT: Mr. Lohkamp, you can't discuss your
20 testimony with anybody because you may be called back as a
21 witness; all right?
22   THE WITNESS: Okay.
23   THE COURT: Thank you.
24   THE WITNESS: Thank you.
25   MR. ROBERTSON: Your Honor, the next witness we'll be

1153

Lohkamp - Redirect   1153

1   calling is a witness by videotape. I believe Mr. Strapp can
2   identify what it is and tell you approximately how long the
3   videotape deposition is. It's a customer of Lawson.
4   MR. STRAPP: Your Honor, our next witness, we're
5   going to play the videotaped deposition of Kristy Oliver.
6   Kristy Oliver is an employee of Blount Memorial Hospital.
7   Blount Memorial Hospital is a customer of Lawson and a customer
8   for the accused Lawson S3 system.
9   The deposition videotape is a little bit under an
10 hour, and we can provide Your Honor with a booklet of the
11 exhibits that will be referenced during the deposition. We've
12 marked the transcript, excerpted portions also as an exhibit,
13 and we will provide that to Your Honor.
14
15   (Videotaped deposition of Kristy Oliver played for
16 the jury.)
17
18   MR. STRAPP: Your Honor, for the record, exhibits
19 referenced during the deposition transcript of Ms. Oliver were
20 Plaintiff's Exhibits 225, 226, 228, 229, 230, 231, 234, 237,
21 238, and 239, and the excerpted portions of the transcript that
22 were played on the video are marked as Plaintiff's Exhibit 518.
23   THE COURT: All right. They are admitted. Next
24 witness?
25   MR. ROBERTSON: Your Honor, plaintiff would call Mr.

1154

Lohkamp - Redirect   1154

1   Dale Christopherson.

2   THE COURT: How long is this going to take?

3   MR. ROBERTSON: Your Honor, I'm trying to cut it back

4   considerably. I think I'd be less than 45 minutes.

5   THE COURT: Mr. Niemeyer, how long is his examination

6   going to be?

7   MR. ROBERTSON: Less than an hour.

8   THE COURT: Let's go. There was a lot of stuff that

9   that could have been excised from that.

10   MR. ROBERTSON: I tried to limit it, Your Honor, but

11 both parties get to cross-designate, so...

12   THE COURT: 611 is in effect in full force.

13

14   DALE CHRISTOPHERSON,

15 a witness, called by the plaintiff, having been first duly

16 sworn, testified as follows:

17

18   MR. ROBERTSON: May I proceed, Your Honor?

19   THE COURT: Please.

20

21   DIRECT EXAMINATION

22 BY MR. ROBERTSON:

23 Q   Will you state your full name for the record, sir?

24 A   Dale Arnold Christopherson.

25 Q   And you are currently the director of development at

1155

1   Lawson Software; correct?

2   A   That's correct.

3   Q   Then in your role as the director of development, you have

4   responsibilities for these software modules that we've been

5   talking about, Lawson requisition self-service, Lawson

6   procurement punchout, Lawson purchase order, Lawson

7   requisitions, Lawson inventory control, and Lawson EDI;

8   correct?

9   A   Those are some of the many that I do have under my

10 control, yes.

11 Q   You are familiar also with the Lawson system foundation;

12 is that right?

13 A   Depends on how deep you want to go into it, but, yes, I am

14 familiar with it at some length.

15 Q   You were asked in your deposition whether Lawson system

16 foundation is a technology layer that sits below these current

17 applications we've been talking about. Do you recall that?

18 A   I certainly do.

19 Q   You said it was?

20 A   Yes, it was and still is.

21 Q   And so isn't it true now that all customers of Lawson are

22 required to license the Lawson system foundation in order to

23 use the current version of the Lawson applications?

24 A   That's correct.

25 Q   And in this procurement version nine plus, any version

1156

1   nine plus you have to do that; isn't that right?

2   A   In nine plus?

3   Q   Any version nine and above?

4   A   Oh, any version nine and above, that's correct.

5   Q   There are several versions of this software we've been

6   talking about; correct?

7   A   Yes, there are.

8   Q   And there's a separate license fee associated with Lawson

9   system foundation; is that correct?

10 A   That's correct.

11 Q   Now, there's been a lot of discussion about these vendor

12 catalogs. A customer can import a vendor catalog into the item

13 master of the Lawson system; isn't that right?

14 A   They can go basically through a three-step process, yes.

15 Q   And you are aware also of this UNSPSC we've been talking

16 about?

17 A   I certainly am.

18 Q   So isn't it true that you can use the UNSPSC to find items

19 from different vendors that were all cross-referenced using the

20 same product category?

21 A   Let me think about what you are really saying there.

22 Could you restate that?

23 Q   Sure. Isn't it true that a user of the Lawson system that

24 has this UNSPSC capability can find items from different

25 vendors that were all cross-referenced to the same product

1157

1   category?

2   A   That's correct, yes.

3   Q   The shopping cart in Lawson requisition self-service can

4   be dynamically built from results of conducting searches in the

5   item master; isn't that right?

6   A   That is correct.

7   Q   And it's also true that the shopping cart can also be

8   dynamically built using the results of searches in the vendor

9   punchout catalogs; right?

10 A   That is also correct.

11 Q   And when the user clicks a checkout in the items in your

12 shopping cart, they are moved into the requisition system, and

13 an actual requisition is created; isn't that right?

14 A   I would actually define that slightly different.

15 Q   All right. Do you recall giving a deposition in this

16 case?

17 A   I certainly do.

18 Q   And you were under oath?

19 A   Uh-huh.

20 Q   I believe you have your deposition transcript. It should

21 be in the first volume.

22 A   Yep.

23 Q   Could you go to page 77? Excuse me. I misspoke. 177.

24 A   177?

25 Q   Yes, sir.

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1   A   Okay. I'm not there yet.

2   Q   Okay, take your time.

3   A   Okay, 177.

4   Q   Starting at about line 18?

5   A   Starting with question, and then on the right-hand screen?

6   Q   Let me read the question for you.

7   Question: And then on the right-hand screen in the card,

8   here you have four items that have been included in your

9   shopping cart. What happens to that when you click checkout?

10   Your answer: When you click checkout, then it would move

11   that information into the requisition system and actually

12   create a requisition.

13   Did you give that answer to that question at that time?

14   A   I certainly did.

15   Q   Okay. Thank you. Once a requisition is approved, the

16   requisition is released and then transferred to the purchase

17   order system; correct?

18   A   That's correct, after it's been approved.

19   Q   Talking just now about procurement punchout, when users

20   have filled their shopping carts, virtually speaking, and

21   checked out from the vendor website using the Lawson

22   procurement punchout, the chosen items and their prices are

23   returned to the Lawson server and a requisition is created

24   using the Lawson requisition self-service application; correct?

25   A   Can you state that again? The second half of it basically

1160

1   multi-vendor catalog capability is a punchout trading partner

2   of Lawson; correct?

3   A   That's correct. They are on the list, yes.

4   Q   It's an accurate statement to say that if Lawson could not

5   market a requisition module, it could not effectively compete

6   in the supply chain management product market?

7   A   I would say that that would be an accurate statement, yes.

8   Q   It's also accurate to say if Lawson could not offer a

9   purchase order module, Lawson could not effectively compete in

10   the supply chain management product market?

11   A   That would also be correct.

12   Q   You've heard a lot of talk about the implementation and

13   installation services that Lawson offers. I just want to be

14   clear that Lawson will provide implementation services to

15   assist its customers with importing vendor catalog data into

16   the item master.

17   A   I didn't hear a question in that, sir.

18   Q   Let me restate it then. Perhaps I misspoke. Is it true

19   that Lawson provides implementation services to assist its

20   customers with importing vendor catalog data into the item

21   master?

22   A   If the customer so chooses and wants that service, yes, we

23   do.

24   Q   So for most situations where a customer licenses the

25   supply chain management suite or the procurement modules we've

1159

1   is where I lost you. ^ you check out at the customer, not the

2   customer but the vendor site and then it was at that point

3   where I got lost.

4   Q   Let me start over. Let's hear the whole question. When

5   users have filled their shopping carts, virtually speaking, and

6   checked out from the vendor website using Lawson procurement

7   punchout, the chosen items and their price are then returned to

8   the Lawson server, and a requisition is created using the

9   Lawson requisition self-service application; correct?

10   A   That's correct.

11   Q   Isn't it true that the current version of the Lawson

12   procurement punchout includes the capability to punch out to

13   multi-vendor catalogs?

14   A   That's correct.

15   Q   One of those examples of a site that you can go that is a

16   multi-catalog vendor -- excuse me, multi-vendor catalog, is

17   SciQuest; correct?

18   A   That's correct.

19   Q   Another example of a multi-vendor catalog site that's

20   available for the punchout procurement is an organization known

21   as GHX; correct?

22   A   That is correct.

23   Q   That stands for Global Healthcare Exchange?

24   A   That's correct.

25   Q   And Global Healthcare Exchange that provides this

1161

1   been talking about in supply chain management, Lawson

2   professional services is going to provide the actual

3   installation and implementation services for that system;

4   correct?

5   A   That's correct, yes.

6   Q   All existing Lawson customers today are under maintenance

7   contracts with Lawson; correct?

8   A   That's correct.

9   Q   So all of the supply chain -- excuse me. All of the

10   supply -- let me restate that. All of the S3 procurement

11   products that are under contract today with Lawson customers,

12   they have maintenance contracts; is that right?

13   A   Could you restate that?

14   Q   Yeah. I'm sorry. It was a bad question. With respect to

15   the Lawson S3 procurement product that's at issue here, any

16   customer that has that product is under an existing maintenance

17   contract?

18   A   That's correct.

19   Q   There's been a lot of talk about this RFP process, and I

20   don't want to go through it again in detail, certainly, but

21   there is a standard set of answers for those common questions

22   that customers have about the S3 procurement product; correct?

23   A   That is correct, yes.

24   Q   I think if you'll look in your book to Exhibit 117.

25   A   Okay.

1162

1   Q   You've seen this document before?

2   A   I don't believe I've actually seen this document except as

3   this exhibit.

4   Q   But you are aware that this is the document that is the

5   proposal automation suite for providing answers with respect to

6   stock questions for the S3 product; right?

7   A   I couldn't confirm or deny that.

8   Q   It's a Lawson document; is that right, sir? You have no

9   reason to doubt it's --

10   A   I have no reason to doubt it. I mean literally, I've not

11   seen the document like this or in any form like this. I've

12   seen a couple answers out of the database, and when I say a

13   couple, probably two or three over the last couple years. So

14   for me to comment on this document, I don't know how many pages

15   it is, it's just not fair.

16   Q   Fair enough. But Lawson does maintain such a document

17   that has stock answers to requests for proposals?

18   A   They do maintain a database, yes.

19   THE COURT: Does the database you are talking about

20   have stock answers for the RFPs?

21   THE WITNESS: Sure. It will have -- there will be

22   things like about the company history, you know, things that

23   are very generic questions that almost all customers will ask

24   in the RFP process, and there's a set of answers that will come

25   up there along with other questions that maybe not all

1163

1   customers ask, but they're routinely asked by a fair number.

2   So the sales team has asked, look, can we get what the answers

3   should be for these so that we can just cut and paste that in

4   so we don't get -- if we had 20 salespeople, you don't have 28

5   different answers for the same thing.

6   Q   This document is 297 pages long. Can you just confirm

7   that, and it has 398 stock questions that often get asked and

8   stock answers that are often provided; is that fair enough? Do

9   you just want to take a look at it for a minute?

10   A   I see it's 297, and keep in mind they are a pretty wide

11   product space. This is just a few, a small number of products

12   that I actually have under my control.

13   Q   I understand. But if you look --

14   A   398 -- I see the last page is 398, answers to 398

15   questions.

16   Q   And just going back to the first page, this has to do --

17   it says there's a database identified there, and then it says

18   Lawson S3 data. Do you see that?

19   A   Uh-huh.

20   Q   So this Exhibit 117 is specifically dealing with just the

21   Lawson S3 product; right?

22   A   It appears to be, yes.

23   Q   And, I mean, if I just randomly open up a page -- for

24   example, I opened up to 106.

25   A   Sure.

1164

1   Q   Question 149 of 398, and this has to deal with a fairly

2   complex question concerning EDI for supply chain management;

3   correct?

4   A   Uh-huh.

5   Q   Not simply what the company is about and that kind of

6   thing?

7   A   Absolutely. It would be a variety of questions.

8   Q   Specific to the functions and features of the S3 product?

9   A   Correct.

10   Q   All right, there was some discussion about industry

11   analyst reports; do you recall that?

12   A   I certainly do.

13   Q   And Mr. Lohkamp, I understood him to indicate that he

14   personally subscribes to a number of those publications;

15   correct? You heard that?

16   A   I certainly heard that, yes.

17   Q   But the company also subscribes to them as a company;

18   isn't that right?

19   A   That's my understanding.

20   Q   And, I mean, in your deposition, you were asked whether or

21   not the company subscribes to Aberdeen, Gartner, and Forrester;

22   right?

23   A   That's correct.

24   Q   And you indicated that some of those reports concerning

25   Lawson's newer products and possible competitor products are

1165

1   disseminated fairly widespread throughout the company; isn't

2   that right?

3   A   If I said widespread, I certainly wasn't meaning -- take a

4   4,000-person company, it's not going out to even 3,000 of those

5   probably.

6   Q   It's available, though, over a Lawson intranet website,

7   isn't it?

8   A   I'm trying to recall the last time I've actually been able

9   to go out and look at any of the documents, and I don't recall

10   any -- I mean, I actually see very few in my current role.

11   Q   Well, it's actually, according to you in your deposition,

12   disseminated among the director level?

13   A   Correct.

14   Q   The manager level?

15   A   Yes.

16   Q   And in some instances, down to individual contributor

17   level; do you recall that?

18   A   Yes, I certainly do. That's going to depend on the

19   product and what the content is.

20   Q   Isn't it a fact that before a new enhancement is released,

21   for example, with respect to this S3 supply chain management

22   module we've been talking about, Lawson does not engage in any

23   kind of intellectual property clearance investigation to insure

24   that enhanced features will not infringe the intellectual

25   property rights of third parties?

1166

1   A   That's correct.

2   Q   You don't do that, do you?

3   A   I do not, no.

4   Q   The company doesn't do that as a policy; correct?

5   A   That's correct.

6   Q   And since May of 2009 when this lawsuit was instituted,

7   Lawson has undertaken no efforts to modify or redesign its

8   existing S3 procurement products; is that right?

9   A   That's correct.

10   MR. ROBERTSON: That's all the questions I have.

11   Thank you.

12   THE COURT: Why don't we take the afternoon recess.

13   It's time to take 20 minutes, ladies and gentlemen. You just

14   take your pads with you.

15

16   (Jury out.)

17

18   THE COURT: Counsel, I have word from the clerk's

19   office that ePlus intends to file 30,000 pages of exhibits

20   under seal. What is that about?

21   MR. MERRITT: Sounds terribly daunting. Let me try

22   to address this, Your Honor. Under Rule 103, we think that

23   we're required to make an offer of proof -- we'd like to do it

24   before we close -- with regard to damages testimony in exhibits

25   that were excluded by the Court's earlier rulings several

---

1167

1   months ago. It has nothing to do with the matters that are

2   currently being tried before this jury, but it's an offer of

3   proof as to lay testimony and to associate exhibits that would

4   have gone to the damages part of the case.

5   The 30,000 is driven significantly by the fact that

6   there are -- it includes some Lawson internal information that

7   are these huge electronic spreadsheets that if they were

8   actually printed out would be an enormous number of pages.

9   We have suggested that with the Court's permission we

10   might be able to simply file a written index and lodge a DVD

11   physically with the clerk's office that keeps us from having to

12   put boxes and boxes of these spreadsheets into the offer of

13   proof.

14   We'll take the Court's guidance on that, do whatever

15   the Court would like us to do. We really are disinclined to

16   burden the Court with all that paper, but the clerk tells us

17   that absent special permission from the Court to put it on a

18   disk, that the default is the paper would have to be filed.

19   THE COURT: Their problem is they don't want the disk

20   imported into the system. I don't see why -- how long is the

21   index?

22   MR. STRAPP: Approximately five pages.

23   THE COURT: Why don't you file the index and then

24   file the -- is it a DVD or CD or what?

25   MR. MERRITT: I believe it's a DVD, Your Honor.

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1   THE COURT: As your proffer proofs and log that as an

2   item, and then it will be filed, and I guess it needs to be

3   filed under seal since it has their financial information.

4   MR. MERRITT: Yes, sir, it has financial information

5   from Lawson. It would need to be under seal.

6   THE COURT: Is this something that is different than

7   the Court has considered in making its ruling on the expert,

8   because you can't get anything in that wasn't before me on the

9   expert's opinion.

10   MR. MERRITT: No, sir.

11   THE COURT: These things were all part of the

12   expert's report, were they?

13   MR. MERRITT: Well, there were two pieces of it, if

14   Your Honor recalls. First of all, the expert was excluded on

15   the motion in limine. His report and the attachments are

16   already a part of the record, and we can't improve upon that in

17   any way obviously. We can't move the ball on that or go back

18   and fill.

19   There was a second motion that the Court granted that

20   was a Rule 37 discovery motion that precluded the use of lay

21   testimony or additional witnesses as an alternative means of

22   proving the damages.

23   THE COURT: That was for failure to comply with the

24   discovery.

25   MR. MERRITT: That was for failure to comply with the

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1   discovery, and the only opportunity for an offer as to what

2   that proof would have been was on September 7th when that was

3   being argued.

4   In fact, Your Honor may recall that I argued that. I

5   believe Mr. McDonald did as well, and you asked, well, what

6   sort of proof would you put in, and on the fly, based on some

7   notes, I was able to say, well, here are the people we think we

8   might call and what some of the evidence might be.

9   What we would like to do is take the opportunity to

10   simply make clear, in a particularized form, what those

11   witnesses and what that evidence would be since the one

12   opportunity previously that was available was on the fly in

13   that hearing. So this is simply to say what the lay testimony

14   and exhibits would be and to try to put that into the record as

15   an offer of proof that's sufficiently particular so somebody

16   would understand what we were talking about on September 7th.

17   THE COURT: Mr. McDonald, do you want a chance to

18   review the index and/or CD or DVD and then respond?

19   MR. McDONALD: I haven't had a chance. I don't know

20   our team has actually had a chance to see what's involved here.

21   I think they made their record back in September. I don't know

22   why at this point they would be proffering evidence that's not

23   part of what they had even offered up in connection with the

24   joint pretrial order. It sounds like it goes well beyond that,

25   but I guess I don't want to weigh in. Maybe we can work

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1   truly apologize, and maybe you'll get another judge to handle

2   the rest of the case.

3   MR. McDONALD: I'm not sure I picked up all that --

4   THE COURT: I'm asking if you said something and I

5   forgot what it was, because I actually don't remember you

6   saying anything.

7   MR. McDONALD: You didn't miss a thing. We haven't

8   formulated our position, Your Honor. I have a couple concerns,

9   though, I can flag and maybe give --

10   THE COURT: That would be helpful to talk about it.

11   MR. McDONALD: Well, this language about "by a

12 vendor" means at some point in time. I think the "by a vendor"

13 for one thing was pretty much agreed to at the Markman hearing,

14 what it did mean, and do inject the concept in time, of time

15 into a phrase like "by a vendor" could create some confusion, I

16 think, do more harm than good, actually. We would probably

17 object to that, but I haven't finalized my position.

18   THE COURT: But I think it's quite clear from the

19 specification that it's an antecedent event to the use of the

20 invention no matter how you cut it.

21   MR. McDONALD: I just think --

22   THE COURT: I understand what you are saying. Think

23 about it and see what you --

24   MR. McDONALD: The other concern I have is anything

25 we do with that, because our experts who have given opinions

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1   relating to claim construction, I'm concerned that if we now

2   move the ball on what the claims mean, what is the implication

3   of that for the testimony that's already been given, the

4   testimony that's yet to come that the Court repeatedly says has

5   to be limited to what's in the expert reports, there were prior

6   decisions by the Court relating to prior art exclusions and

7   things like that. I think there's many implications of making

8   any changes here, so I'm concerned about that.

9   THE COURT: I think -- I'm not sure there are a

10 lot -- that is not a claim construction answer. That's an

11 instruction, and the fact of the matter is that it is not at

12 all unusual for Courts to give revised claim constructions

13 during the trial.

14   In fact, for a good while, it was common to give the

15 claim construction only as part of the instructions. Now, I've

16 never done that just because I didn't want to put myself

17 through that agony, but that's what happens sometimes, and in

18 that event, experts have to take their positions -- take out

19 their position and see what happens. So we'll see.

20   MR. McDONALD: In this case, the experts were allowed

21 to give their reports after the Court's Markman ruling, so I

22 think that really changes the dynamic.

23   THE COURT: Okay. Anything else? Thank you. We'll

24 see you all tomorrow at nine o'clock.

25   (Court adjourned.)

ePlus - Perfect Commerce (Lawson)   Unsigned   Page 1186 - 1187

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 1        IN THE UNITED STATES DISTRICT COURT
 2      FOR THE EASTERN DISTRICT OF VIRGINIA
 3            RICHMOND DIVISION
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 5   -------------------------------------
                                    :
 6   ePLUS, INC.              :  Civil Action No.
                     :  3:09CV620
 7   vs.                 :
                     :
 8   LAWSON SOFTWARE, INC.       :  January 12, 2011
                     :
 9   -------------------------------------
10
11      COMPLETE TRANSCRIPT OF THE JURY TRIAL
12       BEFORE THE HONORABLE ROBERT E. PAYNE
13     UNITED STATES DISTRICT JUDGE, AND A JURY
14
     APPEARANCES:
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25       United States District Court
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 1           P R O C E E D I N G S
 2
 3       THE CLERK:  Civil action number 3:09CV00620, ePlus,
 4   Incorporated, versus Lawson Software, Incorporated.  Mr. Scott
 5   L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, Mr.
 6   Michael G. Strapp represent the plaintiff.
 7       Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms.
 8   Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent
 9   the defendant.  Are counsel ready to proceed?
10       MR. ROBERTSON:  Plaintiff is, Your Honor.
11       MR. McDONALD:  Yes, Your Honor.
12       THE COURT:  All right.  You said you wanted to see me
13   before the jury comes in.
14       MR. McDONALD:  Yeah, there's basically three issues
15   we wanted to raise.
16       THE COURT:  The court reporters always can hear
17   better if you come to the lectern.
18       MR. McDONALD:  There's basically three issues that we
19   wanted to raise this morning.  One is our third witness in our
20   case that we start today is Ms. Raleigh.
21       THE COURT:  Third witness in what?
22       MR. McDONALD:  In our case when we start presenting
23   our case today.  We have Mr. Richard Lawson first, Mr.
24   Christopherson second, and then Hannah Raleigh was supposed to
25   come back and be third today.
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 1       She was supposed to be back last night from New York,
 2   and New York is getting hammered real bad by this blizzard.
 3   She's trying to get another flight, but her flight is not going
 4   to get her here until after the trial day is over today.  So
 5   we've been trying to work something out with ePlus about what
 6   we would do next because we haven't disclosed any exhibits or
 7   anything for the next witness.
 8       THE COURT:  Just call the next witness, the expert or
 9   whoever you've got here.  There's no magic to the order of
10   putting people on.
11       MR. McDONALD:  The next witness we would have
12   actually here is Mr. Lohkamp, calling him back.
13       THE COURT:  Good.
14       MR. McDONALD:  That's fine.  They haven't had a
15   chance to get ready for their cross-examination.
16       THE COURT:  They'll be ready.  They knew basically
17   what you were going to do anyway.  They're not going to do it
18   on your cross-examination; they were going to do redirect, so
19   we're going to reverse things.
20       MR. McDONALD:  We do have a deposition of Ms.
21   O'Loughlin on the RIMS prior art issue that we can move up in
22   the order.
23       THE COURT:  Is that carefully edited to eliminate the
24   trash?
25       MR. McDONALD:  That's being worked on as we speak,
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1   A   In general, sure. It's a remote computer.

2   Q   Using this demonstrative, would you explain the source

3   code architecture of Lawson's system and the components you've

4   illustrated in your demonstrative?

5   A   Yes. The portion on the left labeled client is, contains

6   components that run in the user's web browser. Some items

7   labeled there are JavaScript which I mentioned earlier is a

8   programming language that executes within the browser. HTML

9   are the actual pages that display the information.

10   The right portion on the right labeled service side are

11   the components that run on the server. There is a Java -- box

12   labeled Java web application. That's essentially a web server

13   that feeds the data to the web browser.

14   Below that, the area labeled Lawson transaction manager

15   and Lawson 4GL COBOL comprise what I would call the business

16   logic of the application and contains the Lawson 4GL COBOL

17   code. The transaction manager and supporting features are also

18   -- my understanding is they are termed by Lawson as Lawson

19   system foundation. So it's sort of the back end portion of

20   that.

21   There's the database indicated there which contains the

22   data for the application, and the final box up on the right

23   labeled MCI is just an alternate mechanism for the Java

24   components to talk to the database.

25   Q   Now, you discussed in your demonstrative that there are

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1   both Lawson web-based applications and Lawson 4GL applications

2   within the Lawson system. Could you describe at a high level

3   the kinds of functionality that are implemented in the system

4   using the 4GL application?

5   A   Yes, the Lawson 4GL COBOL code implements the feature of

6   the S3 system including requisition, inventory control, and

7   purchase order.

8   Q   Could you describe at a high level the functionality

9   implemented in the system using the web-based applications?

10   A   The web-based components including the Java web, or Java

11   application server and the components that run the browser

12   together comprise a web-based interface to that Lawson 4GL

13   functionality. They are sort of an overlay or an add-on that

14   provides that browser-based access to those components.

15   Q   What are some examples of the Lawson web-based

16   applications that you studied?

17   A   I believe Lawson calls the system the requisition

18   self-service component, and I believe they also called it --

19   refer to their punchout component as a web-based component.

20   Q   Now, you also mentioned this Lawson system foundation.

21   Could you briefly explain why the Lawson system foundation is

22   important to the functioning of the Lawson system?

23   A   Yes. So the Lawson system foundation, inasmuch as it

24   contains the transaction manager, is responsible for running

25   the Lawson 4GL COBOL programs. It is a runtime environment or

1234

1   a container of sorts that holds that code, determines what's

2   running at what time, and moves the data into and out of it.

3   It's required to run those applications.

4   Q   Could you describe at a high level what the functionality

5   is with respect to the Lawson transaction manager?

6   A   Yes. The Lawson transaction manager would be the key

7   component there that actually runs the COBOL programs for the

8   requisition, inventory control, and purchase order

9   applications.

10   Q   And how does the Lawson transaction manager execute the

11   4GL applications, or what does it do?

12   A   Well, so as I tried to describe, it determines which

13   programs are running at what time. It moves data into and out

14   of the associated working storage structures, and it collects

15   the results. It may also intermediate access to the database,

16   provide access to the database.

17   Q   And you talked about this DB thin API. First of all, what

18   is an API?

19   A   The term API, the acronym API stands for application

20   programmer interface, and it is just a collection of functions

21   or utilities, features which can be used by the programmer.

22   Q   And what do you mean by the term DB thin?

23   A   In this case, it is a database API which just means it's a

24   collection of features that allow the Java code to talk to the

25   database. The term thin to me implies that is it a streamlined

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1   or otherwise not complex mechanism. It's a delegating

2   mechanism that delegates to another layer.

3   Q   What do you mean by delegate?

4   A   So it's sort of a thin wrapper around some more

5   complicated functionality. It passes off requests to another

6   layer for additional processing.

7   Q   Now, you've shown in your demonstrative that the system

8   has a database associated with it. Have you prepared another

9   demonstrative to help you explain the database that's used by

10   the system?

11   A   Yes, I have.

12   MS. ALBERT: Mike, if we could, could we have slide

13   number 85, please.

14   Q   Is this a demonstrative that you prepared to illustrate

15   the database?

16   A   Yes, it is.

17   Q   Could you describe at a high level the nature of the

18   database?

19   A   Yes. So it is what's known as a relational database.

20   Lawson refers to this database as the item master database.

21   The database contains numerous tables. Tables within a

22   database, you can roughly analogize to files in a filing

23   cabinet. They may contain different types of information.

24   There are a number of actual tables from the Lawson item

25   master database illustrated here. The one that I'll mention, a

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1   key table is the ITEMMAST table on the left of this diagram
2   which contains information about items that can be
3   requisitioned within the system, and from -- another table that
4   I'll point out is the POITEMVEN which contains vendor
5   information pertaining to specific items within the ITEMMAST
6   table.
7   Q   You mentioned this term relational database. What is a
8   relational database?
9   A   The term relational just means that a piece of data within
10 the database can refer to or point to another piece of data in
11 various ways.
12 Q   Would you explain the difference between when you say the
13 item master database and when you are referring to this item
14 master or ITEMMAST table?
15 A   Yes. So the ITEMMAST table is a specific table within the
16 database. More generally, Lawson documentation refers to the
17 database as a whole or collectively as the item master
18 database, presumably drawing its name from that key table.
19   THE COURT: The ITEMMAST table has what in it?
20   THE WITNESS: It consequence /TAEUPBS information
21 about items which can be requisitioned.
22 Q   What are some of the types of information about the items
23 that are contained in that table?
24 A   It contains an item number for the item, a textual
25 description of the item, and other information about the item.

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1   Q   Now, you have a few other tables illustrated on your
2   demonstrative. Could you provide us with a high level
3   description of the purpose of the table that's listed R-E-Q
4   header or REQHEADER?
5   A   Yes. The abbreviation R-E-Q is short for requisition, so
6   this is the requisition header table, and it is involved in
7   both shopping cart and requisition functionality.
8   Q   And then you have another table that is referred to as P-O
9   inter F-A-C, POINTERFAC. What is the purpose behind that
10 table?
11 A   The POINTERFAC table is involved in making requisitions
12 available to the purchase order system. It's kind of an
13 intermediator.
14 Q   And I believe you talked about the POITEMVEN table. You
15 have another table shown that's labeled KWDDETAIL. Can you
16 explain at a high level the purpose of that table?
17 A   Yes. Here the acronym, the abbreviation KWD stands for
18 keyword, so it would be keyword detail table, and it is an
19 index used in keyword searches.
20 Q   Now, we referenced this requisition self-service
21 application earlier. Can you explain to the jury from a source
22 code perspective what the requisition self-service application
23 is?
24 A   Yes. So, it is a -- as I described, it is a web-based
25 interface to the Lawson purchase order, requisition, and

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1   inventory control systems.
2   Q   And is that a more -- can you say whether or not that's a
3   more user-friendly interface?
4   A   Certainly, yes. It's the main reason for adding a
5   web-based interface to an application, is to provide increased
6   or ease of use and flexibility.
7   Q   Could you explain from a source code perspective what
8   Lawson's procurement punchout application is?
9   A   Yes. So procurement punchout is a feature of the -- which
10 runs in the context of the requisition self-service application
11 that allows a user to connect to a remote Lawson partner vendor
12 site, perform -- well, it communicates with the site.
13   The Lawson system communicates with the site over a secure
14 communications channel, performs a handshake using a protocol
15 known at cXML is which is a business standard for this type of
16 communication. It allows the user to perform certain shopping
17 operations on the partner site, the vendor site, and ultimately
18 to have those shopping results returned to the Lawson system
19 for incorporation into their shopping cart.
20 Q   I'd like to turn now to the category search functionality
21 that you studied. Does the source code of Lawson system
22 implement functionality that allows a user to search for items
23 by category?
24 A   Yes, it does. There is an option from the find/shop menu,
25 the requisition self-service that brings up a category search

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1   screen.
2   Q   What, if any, database tables does the source code use to
3   conduct this category search functionality?
4   A   There are two. One is called IC item code, ICITEMCODE,
5   and the other is the previously mentioned ITEMMAST table.
6   Q   Do both of those tables belong to that same item master
7   database that you described earlier?
8   A   Yes, they do.
9   Q   What information is contained within that ICITEMCODE table
10 that would be relevant to searching by category?
11 A   The ICITEMCODE table contains the textual description of
12 the levels of the UNSPSC hierarchy and the corresponding codes
13 that are assigned to those levels.
14 Q   And what information does the item master table store that
15 is relevant to searching by category?
16 A   The item master table contains -- in addition to the item
17 descriptions, contains the corresponding UNSPSC codes
18 indicating where they belonged in that hierarchy.
19 Q   When the category selection is chosen by a user from that
20 find/shop menu, what is the first thing that happens in the
21 source code?
22 A   When a user chooses to bring up a category search screen,
23 a request is made from the user's web browser to the back end
24 of the Lawson system. Specifically Lawson calls this kind of
25 request a data request, and it is -- it is handled by the --

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1 passed from the Java code to the -- using the DB thin API that

2 I mentioned previously and results in a search of the

3 ICITEMCODE table for the top levels of the UNSPSC hierarchy.

4 Those top level initial part of the drill-down are

5 returned to the -- formatted as XML and returned to the

6 client's web browser where it's presented to the user to make

7 their initial choice.

8 Q   After the system retrieves these top level categories from

9 the database, would you explain what happens in the source code

10 as the user navigates the available hierarchy of categories?

11 A   Yes. So the process is very similar to that of retrieving

12 those initial top level categories with the exception that as

13 the user chooses levels in the browser, the corresponding

14 UNSPSC codes are conveyed with the request to the back end

15 system, and the ICITEMCODE table is searched to find the

16 corresponding levels, the children or the child levels

17 underneath the selected level. That information is returned

18 and then formatted for the user. In this fashion they can

19 drill down, expanding from the parent to the child.

20 Q   When the user finds his desired category --

21 THE COURT: Excuse me. The parent is the larger and

22 the child just means the more specific; is that right?

23 THE WITNESS: Yes. If you imagine like a family

24 tree, there is a parent, and the children kind of branch out

25 and grandchildren branch out from there. That's what I meant

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1 in terms of that hierarchy.

2 Q   Once the user finds his desired category and chooses to

3 view the items that belong to that category, will you explain

4 what happens in the source code to cause the items that belong

5 to that category to be displayed?

6 A   Yes. So when the user selects the items link, the UNSPSC

7 codes for that particular level of the hierarchy are packaged

8 up as part of a request. In this case, it is what's known as a

9 transaction request. It's passed from the user's browser to

10 the back end, the server component of the Lawson system.

11 This results in a Lawson 4GL COBOL program called RQIB

12 being executed which searches the ITEMMAST table for items

13 which have the corresponding UNSPSC codes. The resulting item

14 information is then formatted as XML and returned to the

15 client's web browser where it is formatted as a search result

16 list.

17 Q   Now, Mr. Niemeyer, I'd like to turn to the keyword search

18 functionality in the Lawson system that you studied. Does the

19 source code of Lawson system implement functionality that

20 allows a user to search by a keyword?

21 A   Yes. The user may choose search catalog option from the

22 find/shop menu of the requisition self-service application

23 which brings up a keyword search screen with a field in which

24 the user can enter one or more search terms. That screen has

25 some additional functionality, advanced search functionality

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1 which allows the user to limit the search, the scope of the

2 search to Lawson certain origin fields and optionally provide

3 what it's called an exclusion term.

4 Q   What do you mean by an origin field?

5 A   It determines where in the information associated with an

6 item the term was located. So there are multiple tables which

7 can relate to a given item within the ITEMMAST table, and

8 different textual and numeric information may be found in those

9 tables. They named those different locations as origin fields,

10 and the user can limit the search if they wish.

11 Q   Can you give us an example of an origin field?

12 A   Well, so the primary description within the ITEMMAST

13 table, there's a field for the description, is the particular

14 origin field. There is also a vendor description in the

15 POITEMVEN table. That is another example of an origin field.

16 Q   Have you prepared a demonstrative to help explain how the

17 keyword search functionality is implemented in the source code?

18 A   Yes, I have.

19 MS. ALBERT: Mike, could we have slide 24, please.

20 Q   Is this the demonstrative that you prepared?

21 A   Yes, it is.

22 Q   What, if any, database tables are involved in this keyword

23 search functionality?

24 A   Well, there are seven depicted here, but the four that I

25 would describe as first are the keyword tables at the bottom.

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1 These are prefixed with the KWD abbreviation, and they are

2 keyword synonym, keyword master, keyword detail, and keyword

3 setup. These tables comprise an index of the available search

4 terms, and then there are three tables above, ITEMMAST which I

5 previously mentioned, POITEMVEN, and a table called ITEMLOC,

6 I-T-E-M-L-O-C, are used after the search is performed to

7 retrieve the item information.

8 Q   And do all of these tables belong to that item master

9 database that you illustrated earlier?

10 A   Yes, they do.

11 Q   What data is contained or what is the keyword detail

12 table?

13 A   Keyword detail table is the key index of search terms, and

14 it relates a specific search term which has been found to the

15 origin field in which it was located and the item number of the

16 item in which it was found.

17 Q   And what types of data is contained in that table?

18 A   Well, as I said, there's an item number, a keyword, and an

19 origin field.

20 Q   Would you please explain briefly how the functionality to

21 build the keyword detail table is implemented in the source

22 code?

23 A   So my understanding is when the system is set up

24 initially, users determine which origin fields are to be

25 enabled for search, and the terms are gathered from the data

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1   and placed into the keyword detail table. For each item, there
2   is a corresponding keyword and an origin field.
3   Q   And what database tables are indexed by the keyword detail
4   table?
5   A   My understanding is that at minimum, the ITEMMAST,
6   POITEMVEN, and ITEMLOC tables.
7   Q   In the context of this source code, what is the purpose of
8   having an index like the keyword detail table?
9   A   It's common practice to create an index to -- an
10 optimization to increase the speed of the search and to
11 eliminate to need to search the whole collection of data when
12 you can condense it to an index that you can search more
13 rapidly.
14 Q   Can you explain how the item vendor table or the POITEMVEN
15 table is used in the implementation of a keyword search in the
16 source code?
17 A   After the search is performed against the keyword tables
18 and item information is being retrieved, corresponding vendor
19 information for the items is retrieved from the POITEMVEN
20 table.
21 Q   Do the records in the item vendor or POITEMVEN table link
22 in any way to the records in the item master or ITEMMAST table?
23 A   Yes, they do. They contain a field which holds the item
24 number for a given item in the ITEMMAST table.
25 Q   Have you prepared a demonstrative to help you explain how

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1   the information in these two tables can be related?
2   A   Yes, I have.
3   MS. ALBERT: Mike, can we have slide 68, please.
4   Q   Is this the demonstrative that you prepared?
5   A   Yes, it is.
6   Q   Now, using your demonstrative, would you please explain
7   how records in the item vendor or POITEMVEN table can be
8   related to records in the item master table or ITEMMAST table?
9   A   Yes. So within the ITEMMAST table, or the item master
10 table, there is a field called ITITEM which holds the item
11 number for that item. That item number uniquely identifies the
12 item within the ITEMMAST table.
13   The PO item vendor table then can -- given record within
14 that table can refer to an item within the ITEMMAST table using
15 that unique number. It's what's known as a key field in the
16 ITEMMAST table. Within the POITEMVEN table, there's a field
17 called PIV item which holds that number, and, therefore, if you
18 want to, for a given item in the POITEMVEN table, you can point
19 back to a specific unique item within the ITEMMAST.
20   MS. ALBERT: Mike, could we go back to slide 24,
21 please.
22 Q   Now, going back to your demonstrative on keyword search
23 query execution, can you explain how the keyword search
24 functionality is implemented in the Lawson system source code?
25 A   Yes. So after the user enters a search term in the

1246

1   browser and hits the search button, the search term is conveyed
2   as part of a request to the server side components which causes
3   the Lawson 4GL COBOL program called RQIC to be executed. The
4   RQIC program ultimately performs a search of the keyword detail
5   table for occurrences of that term that have been previously
6   indexed.
7   Any matching records from the keyword detail table are
8   then used to find the corresponding items in the ITEMMAST table
9   and data gets gathered from the PO and ITEMLOC tables. All of
10 those results are formatted as XML and ultimately returned to
11 the item web browser and formatted as a search word.
12 Q   When the search code searches the keyword tables to locate
13 the keywords that the user typed in, does the source code
14 search the item master table at all?
15 A   No, it does not. It only searches the keyword detail
16 table and the associated keyword tables.
17 Q   Now, I'd like to turn to the functionality for the adding
18 items to a shopping cart and building a requisition. Does the
19 source code of the Lawson system implement functionality that
20 allows a user to select desired items for requisition from a
21 list of results returned from either this category or keyword
22 search that you discussed?
23 A   Yes, it implements a shopping cart functionality whereby
24 the user can indicate that an item from a search result should
25 be added to the shopping cart. Items can be added and removed

1247

1   until checkout operation is performed. Similar to the way you
2   shop on Amazon or another web business.
3   Q   Now, what, if any, database tables are involved in this
4   shopping cart functionality?
5   A   There are three. Two of them are prefixed with the term
6   REQ. One is called REQHEADER and the other is called REQLINE.
7   The third is called PO interface which we mentioned before,
8   POITERFAC.
9   Q   And what information is stored in that REQLINE table
10 that's relevant to the shopping cart functionality?
11 A   The REQLINE table holds the individual line items
12 representing items that were selected to be added to the
13 shopping cart.
14 Q   Does this REQLINE table also contain a status field?
15 A   Yes, it does. In addition to the item information, it
16 contains a status which can indicate that the item is either --
17 while in the shopping cart, it's in a state called unreleased.
18 Q   What does that mean?
19 A   It means that it is part of a shopping cart and not yet
20 part of a requisition.
21 Q   And is there another status that can be indicated in this
22 status field in addition to the unreleased status that you
23 mentioned?
24 A   Yes. So I'd just say both the REQLINE and REQHEADER table
25 that I mentioned which are involved in this contain a status

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1   field which indicates the disposition of the information,

2   whether it's part of the shopping cart or whether it's part of

3   requisition, that the two values can be what's called

4   unreleased or released.

5   It indicates it's either in a status of unreleased or

6   released where unreleased is the status used while the items

7   are in the shopping cart, and released is -- indicates that

8   they are now part of the requisition.

9   Q   What information is stored in that REQHEADER table that's

10   relevant to the shopping cart function?

11   A   The REQHEADER table represents the shopping cart as a

12   whole in this case, and it groups the REQLINE records together.

13   Q   Can you explain how this shopping cart functionality is

14   implemented in the source code?

15   A   Yes. So as the user indicates that they would like to add

16   an item to the shopping cart, when the user indicates the item

17   should be added to the shopping cart, the item number for that

18   item is conveyed as part of a request to the server side at

19   which point a Lawson 4GL COBOL program is executed to add a

20   line to the REQLINE, add a record to the REQLINE table

21   corresponding to that item.

22   Q   Have you created some demonstrative to show what happens

23   in the source code when the user clicks on the checkout button

24   after he has added items to the shopping cart?

25   A   Yes, there should be two.

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1   MS. ALBERT: Mike, can we go first to slide 25,

2   please.

3   Q   Now, using these demonstratives, would you please explain

4   what happens in the source code when the user clicks on that

5   checkout button after he's added items to the shopping cart?

6   A   So when a user clicks on the checkout button, there's two

7   major -- two phases that happen, and this depicts the first.

8   If at this point a requisition header, REQHEADER record

9   has not previously been created, one will be created at this

10   time. This happens when a request is made from the client's

11   web browser to the server side causing the Lawson COBOL program

12   RQIB, or create requisition header which is shown here, to be

13   executed. That program adds a record to the REQHEADER table.

14   Q   What is a requisition header?

15   A   Again, in this case, it represents either the shopping

16   cart as a whole or the requisition as a whole. It serves to

17   group the requisition lines and to contain a status for the

18   overall shopping cart or requisition.

19   MS. ALBERT: Mike, can we go to slide 26, please.

20   Q   So now can you explain what happens in the source code in

21   the next step in this process?

22   A   In this step, there are two activities of importance.

23   This, again, is happening after the user has clicked the

24   checkout button. Request is -- second request is made from the

25   client's browser to the server side. In this case, the Lawson

1250

1   4GL COBOL program called RQIF, or release requisition, is

2   invoked.

3   Its first job is to update the status that I mentioned

4   before in both the REQHEADER and REQLINE tables from an

5   unreleased to a released value. The second step is to create

6   records in the PO interface table, POINTERFAC table, which make

7   those records, make that information then available to the

8   purchase order system.

9   Q   Are records created in this PO interface table at the time

10   when items are initially added to the shopping cart?

11   A   No. They are only created after the checkout operation is

12   performed.

13   Q   Are the records in the REQHEADER and REQLINE tables

14   available to the purchase order system prior to that checkout

15   button being pressed?

16   A   No, they are made available by virtue of the records in

17   the PO interface table.

18   Q   Now I'd like to turn to the process for generating a

19   purchase order. Does a source code of the Lawson system

20   implement functionality that generates one or more purchase

21   orders corresponding to the items listed in a requisition built

22   using the Lawson system?

23   A   Yes, it does. The user can use a program called PO 100 to

24   generate one or more purchase orders from a requisition.

25   Q   Does the source code indicate anything about when multiple

1251

1   purchase orders would be created from line items in a single

2   requisition?

3   A   Yes. As part of the purchase order generation process,

4   the requisition items are essentially sorted in order to

5   produce a separate purchase order for each vendor corresponding

6   to items in the requisition.

7   Q   Have you prepared a demonstrative to explain how this

8   functionality is implemented in the source code?

9   A   Yes, I have.

10   MS. ALBERT: Mike, could we have slide 27, please.

11   Q   Now, what, if any, database tables are involved in this

12   purchase order functionality?

13   A   There are three depicted here. The first is the PO

14   interface table which I mentioned previously. The two new

15   tables are -- one is called PURCHORDER, short for purchase

16   order, P-U-R-C-H-O-R-D-E-R, and the second is POLINE,

17   P-O-L-I-N-E, short for purchase order line.

18   Q   What information is stored in the PO interface table

19   that's relevant to the purchase order generation function?

20   A   Well, I mentioned before, this serves to make the

21   requisition information available to the purchase order system.

22   Q   And what information does the PURCHORDER or purchase order

23   table store that's relevant to the purchase order generation

24   function?

25   A   A record in the PURCHORDER table represents a specific

1252

1 purchase order for a given vendor.

2 Q   What information does the POLINE table store that's

3 relevant to this purchase order generation function?

4 A   The POLINE table contains the individual line items for a

5 specific purchase order. They relate to a given record in the

6 PURCHORDER table, and they contain the information by an

7 individual requested item.

8 Q   Using your diagram, would you explain how that

9 functionality, generating one or more purchase orders, is

10 implemented in the source code?

11 A   Yes. So after the user indicates that they would like to

12 generate purchase orders for a requisition, a request is made

13 to the server side, and the Lawson 4GL program PO 100 is

14 executed. That program reads records from the PO interface

15 table, and as I described before, essentially sorts them in

16 order to create a separate PURCHORDER record for each vendor

17 having items within the requisition.

18   The corresponding line items are added to the POLINE table

19 for that PURCHORDER, and while this process is happening, a

20 textual report is being generated that the user can later print

21 as an actual purchase order.

22 Q   Now, Mr. Niemeyer, I'd like to turn to the procurement

23 punchout application which we discussed earlier. Does the

24 source code of the Lawson system implement the procurement

25 punchout functionality?

1253

1 A   Yes, it does.

2 Q   Of the procurement punchout functionality, what is the

3 first step that's implemented by the source code?

4 A   When a user indicates that they would like to start the

5 punchout process, they are presented with a list of Lawson

6 partner vendors from which to choose. That list is derived

7 from configuration within the system.

8   The user may select one of those at which point the Lawson

9 system establishes or performs a handshake with the remote

10 system. It has established a secure connection, essentially

11 logs the user in remotely, and in return it receives a URL or

12 web address that can be used to establish the shopping session.

13 Q   And once the shopping session is established, can you

14 describe the next step that's implemented by the source code to

15 achieve this punchout functionality?

16 A   Yes. So at this point, what's known as an IFRAME,

17 I-F-R-A-M-E, is opened within the browser. Essentially like a

18 little browser window within the browser. It allows the user

19 to perform their shopping activity on the partner website. At

20 the completion of their shopping, the results of their

21 shopping, remote shopping cart are communicated back to the

22 Lawson system over the network by virtue of a Java servlet on

23 the Lawson system and ultimately incorporated into their

24 shopping cart within RSS. At that point, those items can be

25 used just as they would if they had been shopped for using the

1254

1 other mechanisms we described.

2 Q   How is this punchout process different, for instance, from

3 when I access a retail website for my home computer on my

4 browser at my computer?

5 A   It's different in that the Lawson system is intermediating

6 it or controlling it in several ways. When you do -- when you

7 shop on your computer at home you are connecting directly to a

8 website like Amazon or something, and all the communication is

9 direct.

10   In the case of the Lawson system foundation, this is

11 happening within the context of the requisition self-service

12 application. The Lawson system both establishes the connection

13 to their remote site, performs a login operation for the user,

14 and then finally when the shopping is done, those results are

15 communicated back to the Lawson system directly which it then

16 incorporates into the user shopping cart within RSS,

17 requisition self-service.

18   MS. ALBERT: Thank you, Mr. Niemeyer. I have no

19 further questions. Please answer any questions that Ms.

20 Stoll-DeBell may have.

21

22   CROSS-EXAMINATION

23 BY MS. STOLL-DeBELL:

24 Q   Good morning, Mr. Niemeyer.

25 A   Good morning.

1255

Niemeyer - Cross   1255

1 Q   Prior to your involvement in this case, you had never used

2 Lawson's procurement software; isn't that true?

3 A   That's true.

4 Q   And, in fact, before you began working on this case, you

5 had never used any kind of procurement software.

6 A   I've worked on enterprise systems including eCommerce

7 systems that resulted in procurement and similar types of

8 systems, but not a procurement system per se, no.

9 Q   And in -- do you recall being deposed in this case?

10 A   Yes.

11 Q   And you told the truth and the whole truth in your

12 deposition?

13 A   Of course.

14 Q   And do you recall saying that you had never worked with

15 procurement software in your deposition?

16 A   I don't recall --

17   THE COURT: Ms. Stoll-DeBell, we need to get on the

18 point of use. It didn't impeach what he said. He just

19 qualified it somewhat. So let's don't do things that don't

20 actually correspond item to item, so to speak. That's not

21 impeaching. That's just an explanation of his testimony. All

22 right.

23 Q   And you reviewed only one version of Lawson source code

24 for this case?

25 A   I reviewed the source code that was provided. I wasn't

1264

Niemeyer - Cross   1264

1   A   Yes.

2   Q   And the schema is defined in the source code for Lawson's

3   inventory control module.

4   MS. ALBERT: This is beyond the scope of my direct.

5   MS. STOLL-DeBELL: Your Honor, I'm just trying to

6   understand. I'm going to get into the fields and what fields

7   he looked at for the ITEMMAST table which relates to the

8   schema. So I'm trying to set up some foundation for the next

9   couple of questions I'm going to ask him, and also in a way

10 that maybe lay some background so that the jury can attempt to

11 follow what we're talking about.

12   THE COURT: It doesn't help me in ruling on the

13 objection to tell me what you're doing. Her objection was that

14 it wasn't something she inquired about. And so the question

15 is, for you, what does it relate to that she did inquire about,

16 and that's what you need to tell me. Otherwise, I'm going to

17 sustain the objection.

18   MS. STOLL-DeBELL: It relates to the fields in the

19 ITEMMAST table and what those are, and she did ask him

20 questions about that.

21   THE COURT: And your question right now isn't related

22 to anything she asked, but it's going to get there because you

23 are laying a foundation.

24   MS. STOLL-DeBELL: Yes.

25   THE COURT: Get there quickly. Overruled.

1265

Niemeyer - Cross   1265

1   Q   So I think I'll reask the question, because I'm not sure I

2   got an answer to it. There is a schema for the item data in

3   the ITEMMAST table.

4   A   Yes, yes, there is.

5   Q   And that's defined by the source code for Lawson's

6   inventory control module?

7   A   Loosely described, yes. There are files which describe

8   the schema -- there are files which describe the schema which I

9   found within the source code. Technically I wouldn't call them

10 source code. They are schema files.

11 Q   And schema defines what fields are included in the

12 ITEMMAST table?

13 A   Yes, it describes them.

14 Q   And is a field -- I think of it as being an attribute for

15 an item. Would you agree with that?

16 A   Sure.

17 Q   So, for example, item number would be a field of the

18 ITEMMAST items?

19 A   Yes. It has a different name, but there is a field that

20 represents the item number.

21 Q   And item description would be another one?

22 A   Yes.

23 Q   Unit of measure another one?

24 A   Yes.

25 Q   You could have provided a list of all of the item master

1266

Niemeyer - Cross   1266

1   fields in your expert report; that is something you are capable

2   of doing?

3   A   Yes.

4   Q   But you did not do so?

5   A   No, I did not.

6   Q   Do you agree with me that the item master schema does not

7   include a field for vendor name?

8   A   The ITEMMAST table contains, among other things, what are

9   known as user defined fields which can be supplied by the user

10 with whatever information they like which could include vendor

11 name or vendor number, things like that. Additionally, I point

12 out that the POITEMVEN table relates to the item master table

13 by virtue of its item number.

14 Q   But that's not what I asked you. I asked you does the

15 ITEMMAST table have a field for vendor name?

16 A   Other than the user defined field which could be used for

17 that purpose, it doesn't have a specific field.

18 Q   It can be used for any purpose, you can put anything in

19 there at all; correct?

20 A   Yes.

21 Q   So I'll ask you again. Does the ITEMMAST table --

22   THE COURT: I think he's answered. He said twice now

23 that --

24   MS. STOLL-DeBELL: I'd just like him to say no, Your

25 Honor.

1267

Niemeyer - Cross   1267

1   THE COURT: I know you would, but that's not his

2   answer. His answer isn't no. His answer is it can be used for

3   that purpose if one wants to use it for that purpose which, per

4   force, precludes a no answer. So let's go on. I understand

5   how we'd like to get things, but we don't always get what we

6   like.

7   Q   Okay. Assuming that the user defined fields are not --

8   someone doesn't choose to put vendor names in there -- let's

9   make that assumption -- there's not otherwise a vendor field.

10 So do you agree with me that a user cannot search the ITEMMAST

11 table by vendor name?

12 A   Users don't directly search tables. I don't really know

13 how to address that. Users use the application which runs code

14 which performs searches against many tables.

15 Q   So going through a process, it is possible to search the

16 ITEMMAST table?

17 A   Yes, I'll agree with that generally, sure.

18 Q   If a user field isn't set up as a vendor name, then you

19 can't search the ITEMMAST table by vendor name?

20 A   If the user has not defined a field as such, then there

21 would be no way to search by vendor name that I'm aware of.

22 Q   I want to talk a little bit about the keyword search

23 functionality in RSS.

24 A   Okay.

25 Q   You did review that; correct?

1304

1 case anymore, Your Honor.

2   MR. STRAPP: Marking goes to constructive

3 knowledge of the patents, which is relevant to the

4 issue we just discussed.

5   MR. McDONALD: It is not relevant to notice

6 to Lawson. It's just general public marking. That is

7 not appropriate.

8   MR. STRAPP: Your Honor, the witness will

9 testify that the various products are marked, and we

10 have testimony from Lawson witnesses that they have

11 seen those products at trade shows back as far as

12 2003. That information is relevant to knowledge.

13   MR. McDONALD: The Lawson people have already

14 testified. They never testified to that.

15   THE COURT: I think one of them testified

16 that he went to a trade show and looked at their

17 products.

18   MR. McDONALD: He said he saw the booth, but

19 they never saw the products or any patent markings.

20   THE COURT: He says there's no foundation

21 because you haven't established that they actually

22 looked at the products that have the marking.

23   MR. STRAPP: Your Honor, first of all,

24 circumstantial evidence is relevant to indirect

25 infringement.

1305

1   Secondly, we believe there is direct evidence

2 that we have established through Mr. Lohkamp's

3 testimony.

4   And third, under the case law --

5   THE COURT: Evidence of what?

6   MR. STRAPP: That Lawson employees knew of

7 ePlus, that they have seen ePlus --

8   THE COURT: Somebody said they knew about

9 ePlus, but that's not the point. The point is did

10 they see these patents or these products that had the

11 notice of the patent on them.

12   MR. McDONALD: Mr. Lohkamp's testimony about

13 seeing ePlus at the trade show was in 2003 before he

14 even worked for Lawson. So there's no evidence that a

15 Lawson employee saw that.

16   MR. STRAPP: Your Honor, there's evidence

17 that Lawson has known of ePlus. There's

18 circumstantial evidence at least that Lawson knows

19 that ePlus competes in this particular marketplace.

20 EPlus marks its website, its software, and under the

21 case law, marking is evidence of constructive

22 knowledge of the patents, which can be relevant to

23 indirect infringement.

24   THE COURT: Yes, it is. But do you

25 understand the concept of linkage, foundation?

1306

1   MR. STRAPP: Yes, Your Honor.

2   THE COURT: Well, do you have it?

3   MR. STRAPP: We have testimony from Lawson

4 employees that they have known of ePlus. We have

5 testimony from a Lawson employee that he attended a

6 trade show in which ePlus had set up a booth

7 demonstrating --

8   THE COURT: But he says that's before he even

9 was an ePlus employee. Is that right?

10   MR. McDONALD: Lawson.

11   THE COURT: I mean a Lawson employee. Is

12 that right?

13   MR. STRAPP: I don't know the answer to that

14 one way or the other, Judge.

15   THE COURT: Isn't that something you need to

16 know to establish the foundation.

17   MR. STRAPP: Well, Your Honor, I believe

18 under the case law, even if we don't have direct

19 evidence, circumstantial evidence is sufficient to at

20 least go to the jury so that they can consider whether

21 or not there is sufficient evidence for the indirect

22 infringement claim.

23   THE COURT: All right. Anything else?

24   MR. McDONALD: No, Your Honor.

25   THE COURT: Objection overruled. The

1307

1 exhibits and testimony right now is admitted for the

2 limited purpose of whether or not Lawson may have

3 knowledge of ePlus and their patents. EPlus as a

4 competitor and their patents.

5 BY MR. STRAPP:

6 Q Mr. Farber, can you just tell me briefly what this

7 document is?

8 A Sure. This is a document, which I believe

9 describes at a high level a little bit about the

10 functionality and features of the Procure Plus

11 product.

12 Q Can I direct your attention to the bottom

13 right-hand corner of the first page of this document?

14 A Yes.

15 Q Do you see there a list of U.S. patent numbers?

16 A I do.

17 Q Do you recognize any of those patents numbers as

18 patents that are at issue in this case?

19 A Yes.

20 Q Are those the first three patents listed there?

21 A Yes, they are.

22 Q Can you explain to me why it is that ePlus has

23 decided to mark this particular Procure Plus brochure

24 with the three patents numbers that are at issue in

25 this case?

1308

1 A Well, it's my understanding from working with our
2 counsel that when you have a patents marking, it is a
3 necessity, and it's a form of providing general notice
4 to the industry that you have patents.
5   So we mark things that are publicly disseminated.
6 Q Let me ask you to turn to Plaintiff's Exhibit 417,
7 please. What is this document, Mr. Farber?
8   MR. McDONALD: For the record, I have the
9 exact same objections. I think I know what you're
10 going to say, but I just want to make sure you know I
11 have the same objections to this one.
12   THE COURT: Are these the same kind of
13 documents, it's just another kind of product?
14   MR. STRAPP: Correct. We've discussed --
15   THE COURT: Is that what it is?
16   MR. McDONALD: Yes, it is, Your Honor, and I
17 guess you did have a limiting instruction. So I'd at
18 least request the same limiting instruction.
19   THE COURT: Well, this Exhibit 417 and this
20 testimony is, again, limited to -- for you to consider
21 as evidence respecting whether Lawson is on notice of
22 ePlus as a competitor and its patents that are at
23 issue in this case. That's the only purpose that this
24 is admitted to.
25 BY MR. STRAPP:

1309

1 Q Mr. Farber, this is Plaintiff's Exhibit 417?
2 A It's a similar document and brochure that shows up
3 in written form and on the website that relates to our
4 product information management solutions.
5 Q Which product specifically does this relate to?
6 A Catalog and Content Plus.
7 Q Can you take a look at the bottom right-hand
8 corner of this document, please?
9 A Yes.
10 Q Do you see there a list of U.S. patent numbers?
11 A I do.
12 Q Do you see the same three U.S. patent numbers
13 listed first there that we had discussed with respect
14 to Plaintiff's Exhibit 443?
15 A Yes.
16 Q I'm sorry, 448.
17   Are these the three patents that are at issue in
18 this lawsuit?
19 A Yes, that's the '683, the '516, and the '172
20 patent.
21 Q What types of additional documents or other
22 documents, if any, does ePlus mark with '683, '516 and
23 '172 patents?
24 A We mark the products themselves so that when
25 people utilize the system, they see the patents as

1310

1 soon as they login. Anybody that goes to our website
2 sees markings at numerous locations on our website.
3 Our printed materials, our documentation, information
4 that we hand out at things like trade shows are also
5 marked. So it's basically we try to mark everything
6 that's publicly disseminated.
7 Q Since when has ePlus marked its products and its
8 literature?
9 A I think that was since 2002, if I'm not mistaken.
10 Q What types of customers does ePlus target for
11 these Procure Plus and Content Plus products?
12 A In terms of who we try to attract and sell to, I
13 would say the mid market.
14 Q What do you mean by "mid market"?
15 A Well, similar type customers that Lawson, you
16 know, talked about earlier in the week. You know,
17 they're not necessarily the largest. They're not
18 necessarily the smallest. They fall within a range.
19 It can be, you know, a company that may be in revenue,
20 does, you know, 50 million to 2 1/2 billion. That's a
21 very wide range, but that's what's considered mid
22 market in industry terms.
23 Q Do you know whether or not ePlus competes with
24 Lawson for sales of its e-Procurement software?
25 A Yes.

1311

1 Q How do you know that ePlus competes with Lawson?
2 A Well, I know through personal conversations that I
3 have with prospects and meetings that I attend, sales
4 meetings with my sales executives or account
5 representatives that are meeting with prospects to try
6 to sell them a solution.
7 Q Any other ways that you know?
8 A Yeah. That's one way. Other ways, through emails
9 at times that, you know, these prospects would send to
10 my sales organizations that I get copied on. And
11 sometimes in situations where you're on a conference
12 call, you know, with a lot of vendors, you know, and
13 the prospect that's looking to buy a solution would
14 generally ask some general questions so that, you
15 know, they give the benefit to all the vendors to hear
16 the answer.
17   And sometimes there may be occasion to hear of a
18 competitor situation that way as well.
19 Q Like the Lawson employees we've heard testimony
20 from, do you also pay attention to industry analyst
21 reports?
22 A I do.
23 Q Can you please turn to Plaintiff's Exhibit 463.
24 A 463?
25 Q That's correct.

1316

1   the RFP process from Lawson consistent with your
2   understanding of how the RFP process works for
3   e-Procurement software?
4   A Yes, I believe so.
5   Q When ePlus receives an RFP, does ePlus itself
6   draft a response and ensure that the response that it
7   gives to the RFP is accurate?
8   A Yes, ePlus would draft the response, yes.
9   Q In addition to industry analyst reports, what
10 other types of media or publications do you follow to
11 try to keep abreast of trends or developments in the
12 e-Procurement industry?
13 A In addition, to analysts reports?
14 Q Correct.
15 A There's a lot of sources. You know, we do --
16 besides the reports, you get to have briefings with
17 the analysts. We actually sit down and they disclose
18 some information to you about competition. There's
19 times where we follow -- not times. We do follow a
20 number of different trade magazines. There's web
21 based information such as blogs that are written now
22 in this discipline of procurement sourcing and catalog
23 management.
24   There's the competitors websites that we looked at
25 very often to see what the competitors are doing and

1317

1   try to gain insight based on whatever public
2   information is available to help us position our
3   products and solutions.
4   Q Do you know whether in these types of publications
5   you've been discussing there's ever been any mention
6   of ePlus or its patents?
7   A Yes.
8   Q What are you referring to specifically?
9   A There have been authors that have written things
10 on blogs, on websites. There have been newspaper
11 articles, trade magazines widely published --
12   MR. McDONALD: Your Honor, we already went
13 through these issues as to foundations for some
14 exhibit that's been excluded. Now he's talking about
15 the same thing. That has been excluded.
16   THE COURT: It sounds to me like it.
17   MR. STRAPP: Your Honor, I wasn't planning to
18 go into any detail about these exhibits or show them,
19 obviously. I was just asking about his personal
20 knowledge as the president of ePlus, what does he do
21 to keep abreast of industry developments.
22   THE COURT: What's that got to do with
23 anything in the case?
24   MR. STRAPP: It's relevant to understanding
25 how the marketplace works and how people in the

1318

1   industry, including the president of ePlus keeps track
2   of what's going on in the industry.
3   THE COURT: Objection sustained.
4   BY MR. STRAPP:
5   Q All right. Mr. Farber, you heard some testimony
6   that individuals at Lawson consider publications from
7   Gartner, I think that's an industry analyst, to be
8   some of the most reliable industry publications. Is
9   that consistent with your understanding as well?
10 A That's what they said, yes.
11   THE COURT: The question is: Is it
12 consistent with your understanding?
13   THE WITNESS: That Gartner is a widely
14 recognized --
15 Q And reliable publication?
16 A For the most part.
17 Q Is Gartner an industry analyst report that ePlus
18 subscribes to?
19 A We have.
20 Q Have you personally reviewed Gartner research
21 reports and industry analyst reports?
22 A I have.
23 Q I'd like you to turn, please, to Plaintiff's
24 Exhibit 325.
25 A I don't know that I have a 325. Here it is. It's

1319

1   out of order. Okay. I got it.
2   Q It's also up on the screen for your reference if
3   you want to see a larger version there.
4   A Okay.
5   Q Does this appear, Mr. Farber, to be a Gartner
6   research report?
7   A Yes.
8   Q And is this the type of Gartner research report
9   that you have reviewed in the past?
10 A Yes.
11 Q What's the date of this particular Gartner
12 research report?
13 A This is February 17, 2005.
14 Q What is the title of this report?
15 A Ariba/ePlus settlement could spark more patent
16 lawsuits.
17 Q From reading that title, what do you understand
18 the subject matter of this particular report to be?
19 A On the subject line, it's referring to a
20 settlement agreement that Ariba and ePlus had
21 pertaining to a certain number of our patents, and
22 Gartner, you know, is letting people know that it
23 could potentially result in some more litigation or
24 lawsuits.
25 Q What patents were the subject of this patent

1320

1 infringement settlement referenced in the Gartner

2 report?

3 A The same ones that are at issue here today.

4 Q The three patents that are at issue in this case?

5 A That's correct.

6 Q All three of those were at issue in this Ariba

7 and ePlus litigation?

8 A Yes, that's correct.

9 Q What is the recommendation here at the second

10 sentence of the first page?

11 A Starting with investigate, investigate the risk of

12 challenges to your products and whether others have

13 infringed on your patents.

14 Q What do you understand that to mean?

15 A They are giving advice, the research analysts --

16 MR. McDONALD: Objection, Your Honor. I

17 don't think the witness can interpret the report.

18 THE COURT: Sustained.

19 Q Let's turn to the next page of the document,

20 please.

21 THE COURT: Ladies and gentlemen, this

22 document is admitted for a limited purpose. Whether

23 or not Ariba and ePlus settled a lawsuit involving the

24 infringement of this case, I mean of the

25 patents-in-suit in this case, is not one of -- is

1322

1 recommendations for ISVs. Is ISV a term that's used

2 in the supply chain management industry?

3 A It's used in the computer industry.

4 Q What does it refer to?

5 A It means independent software vendors. Those

6 vendors that develop and install software.

7 Q Is ePlus an ISV?

8 A Yes.

9 Q Is Lawson an ISV?

10 A Yes.

11 Q What recommendations is Gartner providing to

12 companies like ePlus and Lawson in this particular

13 Gartner research report?

14 A What Gartner is recommending is to make sure that

15 your innovations are patented, which is the marking

16 that we talked about earlier, and then do an extensive

17 review of the functionality of your software against

18 patents that are known to be in dispute.

19 MR. McDONALD: Your Honor, we don't need this

20 witness to read this document to us. I object.

21 THE COURT: I think that's enough.

22 MR. STRAPP: I have no further ear questions.

23 Thank you for your time, Mr. Farber.

24 THE COURT: Cross-examination.

25

1321

1 admitted only for the purpose of whether -- for you to

2 to consider as evidence of whether Lawson knew about

3 ePlus and the patents-in-suit in the case in view of

4 the fact that one of the witnesses from Lawson

5 testified about reviewing the Gartner reports as a

6 regular proposition.

7 You may not conclude from this information

8 that because Ariba thought it might have infringed

9 ePlus' patents and reached a settlement of that matter

10 that Lawson infringes those same patents, but you can

11 consider the evidence of whether Lawson knew about

12 ePlus as a competitor and ePlus' patents, and also in

13 deciding on some of the as, I'll tell you later, some

14 of the defenses that have been offered in the case by

15 Lawson. And those are the limited purposes.

16 Are there any other requests for limiting

17 instruction other than what I just gave?

18 MR. McDONALD: No, Your Honor. Thank you.

19 THE COURT: All right.

20 Q Mr. Farber, I'd like to direct your attention to

21 the bottom of the second page of this Gartner report.

22 Do you see that there are some recommendations listed

23 there in bullet points?

24 A Yes.

25 Q I want you to take a look in particular at the

1323

1 CROSS-EXAMINATION

2 BY MR. McDONALD:

3 Q Good afternoon, Mr. Farber.

4 EPlus never gave Lawson any notice of these

5 patents directly before they sued them, did they?

6 A No.

7 Q And so the first time there's a direct

8 communication between ePlus and Lawson is when ePlus

9 filed a complaint and served that complaint on Lawson?

10 A Yes, that's my understanding. That's the way we

11 were instructed to do that.

12 Q That was in May of 2009; is that correct?

13 A I believe that's correct, yes.

14 Q You talked at the beginning of your testimony

15 about some documents that you said put the patent

16 number out there in the public so that the public

17 would see you had these patents numbers. Do you

18 remember that?

19 A I said that we put the information out because it

20 was our understanding that that's how you have to

21 disseminate the patent, and we put it on documents

22 that are publicly available.

23 Q And those documents that you picked as examples of

24 those publicly available documents, those are a couple

25 of exhibits that were put up on the computer monitors

1324

FARBER - CROSS   1324

1 during your testimony, right?

2 A I didn't select them but I think my attorneys did,

3 yes.

4 Q You weren't surprised that they were asking you

5 about those documents, are you?

6 A I'm not surprised at anything.

7 Q So let's put up Exhibit 448 for a moment.

8 Plaintiff's Exhibit 448.

9 A Okay.

10 Q Do you recall this was one of the documents that

11 Mr. Strapp asked you about?

12 A Yes.

13 Q This is one of these examples of these publicly

14 disseminated documents that have the patent number?

15 A Yes.

16 Q Can we blow up -- on the first page of Plaintiff's

17 Exhibit 448, the lower left corner, all the way down

18 to the very bottom of the page, as far as you can go.

19 A Yes.

20 Q Isn't it true, Mr. Farber, that the document that

21 you said was publicly disseminated was, in fact,

22 designated by ePlus, your company, as confidential and

23 proprietary to ePlus, Inc.?

24 A On this it was, but I don't know if this was a

25 brochure, Mr. McDonald, or if it was on our website

1325

FARBER - CROSS   1325

1 screen that gets published.

2 Q Are you saying you have on a website information

3 that would be publicly available that you're going to

4 say that that is confidential and proprietary to

5 ePlus?

6 A It could be.

7 Q Do you actually know what you're talking about or

8 not?

9   THE COURT: Wait a minute. That's not a

10 proper question.

11   But let me tell you-all something. This

12 designation is confidential. All of this. This is

13 something that happened during the lawsuit under a

14 protective order. And what happens is when the

15 parties exchange documents, the lawyers can say they

16 are confidential or certain kind of categories or not.

17 That's how it was put on there.

18   MR. McDONALD: That's only the very bottom

19 one, Your Honor. That's the only one that's in all

20 capitals that was marked --

21   THE COURT: I'm sorry. Anyway. That's what

22 this big thing that says, Confidential, PX 004, page 1

23 of 8 means.

24   Now, he's talking about this section of the

25 first page. Can you highlight that? Proprietary and

1326

FARBER - CROSS   1326

1 confidential, ePlus, Inc. That means that when ePlus

2 put this out to the public, they also put out the fact

3 that it was proprietary and confidential ePlus

4 information. Whatever that means. All right.

5 BY MR. McDONALD:

6 Q Do you see that highlighting here on the screen,

7 Mr. Farber, that proprietary and confidential, ePlus,

8 Inc.?

9 A I do.

10 Q That was a marking that the company put on this

11 document, right?

12 A I would imagine so.

13 Q Then there's another one below that that the Judge

14 was talking about that was done by the lawyers for

15 ePlus in producing this to Lawson?

16 A That's what I heard.

17   MR. McDONALD: So if we look above the

18 highlighting, if we could highlight that paragraph

19 above that, Bill.

20 Q The sentence that begins, All information. So

21 that's in addition to the proprietary and confidential

22 legend from the company. Above that there's actually

23 a paragraph that says, All information contained

24 within this document is confidential and proprietary

25 to ePlus, Inc. Do you see that?

1327

FARBER - CROSS   1327

1 A I do.

2 Q This document wasn't publicly distributed, was

3 it?

4 A I disagree with you. I believe it was.

5 Q What's your basis for believing this document that

6 was designated by ePlus was confidential and

7 proprietary was publicly distributed?

8 A Because I'm familiar with the document, and I know

9 of certain instances of where it was used, and I know

10 that it was freely distributed in certain trade shows

11 and to certain customers, and the information as

12 depicted here is also on our website.

13 Q Well, you mentioned distributing information to

14 customers. Is it true that from time to time you've

15 distributed information to customers, but you want to

16 limit the distribution of it so it doesn't go beyond

17 the customers?

18 A And we usually have a nondisclosure in place for

19 that, yes.

20 Q So this is something that you might have disclosed

21 to a customer with the intent that it not be further

22 distributed to other companies such as Lawson,

23 correct?

24 A No, I don't believe I said that.

25 Q But I'm asking you, isn't it true when you put a

1352

1352

1   REDIRECT EXAMINATION

2   BY MR. STRAPP:

3   Q   I'm going to ask Lawson to put back up on the

4   screen the press release that was shown to you,

5   Mr. Farber.

6   Mr. Farber, what's the purpose of ePlus' press

7   releases generally? Why does ePlus issue press

8   releases?

9   A   A press release is issued to, you know, let the

10   industry know what's going on at ePlus and what we

11   think are notable events.

12   Q   Do you see at the top of this document there's a

13   date, July 21, 2003? Do you see that?

14   A   Yes.

15   Q   Right above it, it says "market wire." What's

16   your understanding of market wire? What does that

17   imply about where this was disseminated to?

18   A   Market wire is a public relations organization

19   that picks up will press releases and then

20   redistributes them on their own vehicles of

21   communication.

22   Q   So who would have been the target audience of a

23   press release about ePlus' patent and the subject

24   matter of the patent?

25   A   Well, it would have had a very broad distribution.

1354

FARBER - REDIRECT   1354

1   A   Trade shoes. Information that's, you know, widely

2   available and nonrestricted on our websites.

3   Q   For example, at an industry trade show, can anyone

4   walk up, take a product brochure and walk away?

5   A   Absolutely.

6   Q   Can anyone go to the ePlus website and see the

7   patent numbers marked there?

8   A   Yes.

9   MR. STRAPP: No further questions.

10   THE COURT: All right. You may step down,

11   sir.

12   (The witness was excused from the witness

13   stand.)

14   MR. ROBERTSON: Your Honor, we have a few

15   housekeeping matters to take care of, a few

16   stipulations to read into the record. If you'd like,

17   I can do that now.

18   THE COURT: The lunches are here. I think

19   I'll let you-all clean up and get things straightened

20   out. We'll take one hour for lunch. You can take

21   your notebooks with you.

22   (The jury is out.)

23   THE COURT: Do you have something,

24   Mr. Robertson, you wanted to give me that I had asked

25   for or something and I told you to do it after the

1353

FARBER - REDIRECT   1353

1   Certainly, you know, to ISVs and certain customers

2   that look at the releases. The financial world as

3   well.

4   Q   This press release specifically mentions one of

5   the patent numbers that's at issue in this case,

6   doesn't it? The '172?

7   A   Yes.

8   Q   You were asked a few questions by Mr. McDonald

9   regarding marking. Do you recall that?

10   A   Yes.

11   Q   Does ePlus mark any of its products or patent

12   literature that is disseminated publicly without

13   restriction?

14   A   Yes.

15   Q   Which particular --

16   MR. McDONALD: Objection. This is already

17   covered.

18   THE COURT: Overruled.

19   Q   Which particular products or product literature

20   are marked with a patent that aren't restricted in any

21   way?

22   A   Sales brochures, sales presentations that are

23   provided at either a prospect's or industry conference

24   that we speak at.

25   Q   Trade shoes?

1355

1355

1   examination at the break?

2   MR. ROBERTSON: Yes, sir. Two thinks, Your

3   Honor. The first issue had to do with this deposition

4   destination of that was Kristy Oliver.

5   THE COURT: And the issue there was whether

6   Lawson had designated that part of it on item No. 18,

7   page 29, as a fairness designation or whether you had

8   designated it.

9   MR. ROBERTSON: Yes, sir, and we have the

10   answer to that question.

11   THE COURT: And the answer is?

12   MR. ROBERTSON: It was Lawson. And let me

13   direct you to where you can find it.

14   THE COURT: Do you all agree?

15   MR. SCHULTZ: Yes.

16   THE COURT: All right.

17   MR. McDONALD: It was ePlus' counsel that

18   asked it during the actual taking of the deposition,

19   but we at Lawson actually designated it for the

20   reading.

21   THE COURT: All right. The fact that ePlus

22   asked it but didn't offer it doesn't change the

23   fundamental issue, and that is who opened the door at

24   the trial. So this doesn't open the door.

25   MR. McDONALD: We put it in without their

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1   And there's also a case called SEB from the Federal

2   Circuit which has to do with the standard of intent

3   for the inducement infringement, which I understand

4   also includes a reckless disregard for the patent.

5   THE COURT: I want you to give Ms. Haggard

6   the citations for those two cases, plus --

7   MR. ROBERTSON: Let me be candid with the

8   Court.

9   THE COURT: What is it?

10   MR. McDONALD: Akamai.

11   THE COURT: Alkamai?

12   MR. ROBERTSON: Alkamai is how it's

13   pronounced.

14   THE COURT: I can't pronounce it. All right.

15   I want you to give her the cites, so I make sure I've

16   read those while I'm working on the instructions.

17   MR. ROBERTSON: The Supreme Court has granted

18   a writ of certiorari with respect to this SAB case I

19   just referenced. But the Federal Circuit just came

20   down with a case I think in the last week that said

21   that the pendency of a writ of certiorari has no

22   impact whatsoever on what the state of the law is.

23   THE COURT: Why did the Federal Circuit feel

24   compelled to decide that? I think that's been the law

25   forever.

1489

1   MR. ROBERTSON: I think it was because one of

2   the litigants made the argument.

3   THE COURT: I understood that to be the case

4   for as long as I've been practicing law.

5   MR. ROBERTSON: All right. Thank you, Your

6   Honor.

7   THE COURT: All right. Thank you all very

8   much. Give the citations to her tonight so she can

9   print those out for me. Give her the books and we'll

10   be ready to go.

11   Thank you very much.

12

13   (The proceedings were adjourned at 5:34 p.m.)

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1   IN THE UNITED STATES DISTRICT COURT
2   FOR THE EASTERN DISTRICT OF VIRGINIA
3   RICHMOND DIVISION
4
5 -------------------------------------
                :
6 ePLUS, INC.   : Civil Action No.
                : 3:09CV620
7 vs.   :
                :
8 LAWSON SOFTWARE, INC.   : January 13, 2011
                :
9 -------------------------------------
10
11   COMPLETE TRANSCRIPT OF THE JURY TRIAL
12   BEFORE THE HONORABLE ROBERT E. PAYNE
13   UNITED STATES DISTRICT JUDGE, AND A JURY
14
   APPEARANCES:
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1   P R O C E E D I N G S
2
3   THE CLERK: Civil action number 3:09CV620, ePlus,
4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott
5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and
6 Mr. Michael G. Strapp represent the plaintiff.
7   Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms.
8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent
9 the defendant. Are counsel ready to proceed?
10   MR. ROBERTSON: Plaintiff is, Your Honor. Thank you.
11   MR. McDONALD: Yes, Your Honor. Thank you.
12   THE COURT: Do you need to see me about something
13 before the jury comes in?
14   MR. ROBERTSON: Yes, Your Honor. You had asked us to
15 take a look at those appendices with respect to our motion on
16 this implementation on a customer-by-customer basis.
17   THE COURT: Yeah.
18   MR. ROBERTSON: We have done that, and the reason I
19 raised it, Your Honor, is one of the witnesses that's going to
20 be called this morning is Ms. Hannah Raleigh. You may recall
21 she testified once already. She is involved with Lawson
22 Professional Services that has to do -- that has responsibility
23 for implementation of the Lawson software products, and we're
24 concerned that she's going to be getting into areas in and
25 presenting testimony that Lawson is going to contend are

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1 defenses to infringement later that are directly implicated by
2 that interrogatory number 24.
3   What I have provided Your Honor with is the
4 appendices that were referenced in the answers to the
5 interrogatories, the transcript from the March 26th hearing,
6 telephonic hearing on the motion to compel, and the relevant
7 citations to the transcript where this issue came up, and I do
8 want to continue to press the motion, Your Honor.
9   We do think that the answers, even with the
10 appendices, were nowhere near what was called for and what Your
11 Honor directed Lawson to do in response to that.
12   If I might just, Your Honor, you may recall that
13 these appendices that are being referenced were provided to
14 ePlus three months before the motion to compel was presented,
15 and the appendices do not respond to the interrogatory as
16 represented by counsel for Lawson.
17   Indeed, if you look at some of the appendices, for
18 example --
19   THE COURT: Is A appendix A?
20   MR. ROBERTSON: Yes, sir. Under the tab December 23,
21 2009, response to interrogatory number -- yeah, A is one.
22   THE COURT: March 26th is the first tab, the
23 transcript, and then there's an A behind that. Is that
24 appendix A or not?
25   MR. ROBERTSON: I believe appendix A, Your Honor, is

1554

CHRISTOPHERSON - DIRECT   1554

1   That's not a proper relevant line of questioning.
2   MS. STOLL-DeBELL: I'm asking him to comment
3   on how the software works.
4   THE COURT: Your asking him to comment on
5   what another witness did. So what's the difference
6   between asking him -- can I ask another witness does
7   he believe the other witness was telling the truth? I
8   can't ask that, can I?
9   MS. STOLL-DeBELL: No.
10   THE COURT: If you're testifying, I can't ask
11 you do you believe that witness A was telling the
12 truth, can I?
13   MS. STOLL-DeBELL: No, but I think this is
14 different because we're talking about Lawson's accused
15 software in this case. And Mr. Christopherson does
16 know how that software works. He's worked with it for
17 nine years. So I'm asking him about that.
18   THE COURT: No, you're asking him about what
19 somebody else did.
20   MS. STOLL-DeBELL: Your Honor, I'm asking him
21 about what he saw Dr. Weaver do with the software he
22 works with.
23   THE COURT: I know. Your asking him to
24 comment on Dr. Weaver's testimony, right?
25   MS. STOLL-DeBELL: What he saw the software

1555

CHRISTOPHERSON - DIRECT   1555

1   do. What he saw Dr. Weaver do with the software in
2   this case.
3   THE COURT: Objection sustained. Please
4   disregard the answer. One witness can't comment upon
5   what another witness has testified to in that fashion.
6   BY MS. STOLL-DeBELL:
7   Q I'm going to ask you some questions about UNSPSC
8   codes. Okay?
9   A Okay.
10 Q Are UNSPSC codes used to categorize similar
11 products for use with different kinds of analysis?
12   MR. ROBERTSON: Objection. Lack of
13 foundation.
14   MS. STOLL-DeBELL: I can lay a foundation.
15   THE COURT: All right.
16 BY MS. STOLL-DeBELL:
17 Q Do you know what UNSPSC codes are?
18 A Yes.
19 Q Do you work with them as part of your work for
20 Lawson software?
21 A Yes.
22 Q Does Lawson Software have the capability of using
23 UNSPSC codes?
24 A Yes.
25 Q Are UNSPSC codes used in Lawson Software to

1556

CHRISTOPHERSON - DIRECT   1556

1   categorize similar products to be used for different
2   kinds of analysis?
3   A Yes.
4   Q Do they help companies analyze spending patterns?
5   A Yes.
6   Q Do UNSPSC codes identify generally equivalent
7   items?
8   MR. ROBERTSON: Objection, Your Honor. I
9   think that calls for an opinion, and it also intrudes
10 on an opinion with respect to infringement issues. So
11 it calls for a legal conclusion.
12   THE COURT: It calls for expert opinion, did
13 you say, or legal conclusion or what?
14   MR. ROBERTSON: It calls for an expert
15 opinion.
16   THE COURT: Your voice dropped off right
17 there at the end and I didn't hear it.
18   MR. ROBERTSON: I apologize, Your Honor.
19 Yes, it's seeking a legal opinion from this witness
20 and it calls for a legal conclusion in this case.
21   THE COURT: A legal opinion? Why is it a
22 legal opinion?
23   MR. ROBERTSON: Excuse me. I misspoke. It
24 calls for an expert opinion, Your Honor, and it seeks
25 a legal conclusion.

1557

CHRISTOPHERSON - DIRECT   1557

1   THE COURT: All right. And the question was?
2   MS. STOLL-DeBELL: The question was, Do
3   UNSPSC codes identify generally equivalent items. I
4   don't think it calls for an expert opinion. I'm just
5   asking him a fact about whether these codes categorize
6   generally equivalent items. It's not an expert
7   opinion.
8   THE COURT: It's a lay opinion. So you're
9   asking him whether in his opinion that's what they do?
10   MS. STOLL-DeBELL: Yes.
11   THE COURT: Why is his opinion relevant?
12   MS. STOLL-DeBELL: Because he works with the
13 software. The software uses these codes. And so he
14 can talk about what the codes do.
15   THE COURT: You can ask him his opinion as a
16 lay person what it does. It's up to the jury to
17 decide what weight to give to the opinion.
18   MS. STOLL-DeBELL: Okay.
19 BY MS. STOLL-DeBELL:
20 Q Do you understand or do you want me to ask it
21 again?
22 A Will you ask the question again? I think it's a
23 yes or no.
24 Q Okay. It might be. In your lay opinion, do
25 UNSPSC codes identify generally equivalent items?

1566

CHRISTOPHERSON - DIRECT   1566

1   THE COURT: Can you tell?

2   THE WITNESS: I can tell.

3   THE COURT: Now the next question is how do

4   you tell because that's the foundational question.

5   Q How do you tell?

6   A How do you tell? When we open up a window, which

7   is what's occurred here, when you have selected, in

8   this case I believe it's Staples link, a brand new web

9   page is opened up. And there's a frame put on that.

10 That frame is much like a picture frame. In this

11 case, really closer to a digital picture frame.

12   So the outside of the frame looks like the frames

13 in any of the pictures here. You can put a label on

14 that frame. The label is Lawson. We happen to put

15 our logo, our brand, always with Punchout since we've

16 come out with that product always in the upper

17 left-hand corner.

18   Everything below that is the picture. So we have

19 created the frame, but we don't care what happens

20 inside of that picture. At that point everything

21 below that is being run by and controlled by the

22 vendor.

23 Q Okay. So in this slide you can see there's a list

24 of categories?

25 A Yes.

1567

CHRISTOPHERSON - DIRECT   1567

1   Q Are you saying that that is controlled by the

2   vendor?

3   A Correct.

4   Q And not Lawson?

5   A Correct.

6   Q We can go to the next page. And within the

7   picture frame, do you see results of a search?

8   A What I see is they have drilled down into the

9   catagory further.

10 Q Is it the vendors software that's providing that

11 drill down of catagory?

12 A Yes.

13 Q And not Lawson?

14 A Correct.

15 Q Okay. If we can go to the page ending in 1269.

16 It's a couple pages ahead. What is this showing?

17 A In this case, they have selected some paper. And

18 you can start seeing the item description, more

19 information about that particular product.

20 Q Is it the vendor software that's providing that

21 item description and additional detail regarding that

22 product?

23 A Yes.

24 Q And not Lawson?

25 A Correct.

1568

CHRISTOPHERSON - DIRECT   1568

1   THE COURT: In view of what you said earlier,

2   whose software is providing the whole page?

3   THE WITNESS: The whole page, Your Honor, is

4   actually being constructed by two parties. You've got

5   the very -- actually, three parties. You've got in

6   this case Internet Explorer is done by Microsoft.

7   That's creating the blue bar and the borders around

8   it. Right below that is Lawson. So you have the

9   Lawson logo. All we're putting up is an image of that

10 and it enters blank space.

11   THE COURT: Whose software is being used to

12 enable me to view this?

13   THE WITNESS: To enable you to view it? It

14 would be Microsoft. It's Internet Explorer in this

15 particular example. That's the browser that's being

16 used.

17   THE COURT: That's not what I'm asking.

18   THE WITNESS: Sir, I didn't understand then.

19   THE COURT: Do I have to have one of the

20 Lawson systems in order to see what's on this screen?

21   THE WITNESS: To use Punchout, yes.

22   THE COURT: All right. Now I understand.

23 Thank you.

24   THE WITNESS: It would help maybe, Your

25 Honor -- Punchout is what opens up --

1569

CHRISTOPHERSON - DIRECT   1569

1   MR. ROBERTSON: Your Honor, I just object.

2   The question has been answered.

3   THE WITNESS: Okay.

4   THE COURT: You may have objected to my

5   question.

6   MS. STOLL-DeBELL: I think he did actually.

7   BY MS. STOLL-DeBELL:

8   Q Okay. Are there some of these Punchout vendor

9   websites that customers can go to without using

10 Punchout?

11 A Can you say that again?

12 Q Yes. So, for example, Staples link, is that one

13 of the Punchout vendors that can be used with Lawson's

14 Punchout product?

15 A Yes, it is.

16 Q Okay. Can a customer use Stapleslink.com without

17 having the Punchout product?

18 A I do not know.

19   MR. ROBERTSON: No objection.

20 Q I think we're done with that line of questioning

21 so I'm going to transition again for you.

22 A Sure.

23 Q While you take a drink.

24 A That's okay. Go ahead.

25 Q When did you first learn about ePlus' patents?

1570

CHRISTOPHERSON - DIRECT   1570

1   A May 10, 2009.
2   Q Is that when you first learned about the law suit
3   that ePlus had filed against Lawson?
4   A Yes.
5   Q What did you do when you learned that ePlus had
6   filed suit against Lawson for patent infringement?
7   A What I first did was I got the three patents and
8   reviewed those, read those.
9   Q What did you think when you finished reading those
10 patents?
11   MR. ROBERTSON: Objection, Your Honor. This
12 is calling for a legal conclusion and it's --
13   THE COURT: I'm sorry?
14   MR. ROBERTSON: It's calling for a legal
15 conclusion, Your Honor, and it's not relevant.
16   THE COURT: What did he think? Is that the
17 question?
18   MS. STOLL-DeBELL: Yes, what did he think.
19   MR. ROBERTSON: It's a little vague and
20 ambiguous, too.
21   THE COURT: Well, I think maybe that's the
22 right objection. Sustained.
23   We have to have a more precise question to
24 understand whether it's objectionable or not.
25   MS. STOLL-DeBELL: Okay.

1571

CHRISTOPHERSON - DIRECT   1571

1   BY MS. STOLL-DeBELL:
2   Q After reading the patents, did you think Lawson
3   had a problem with these patents?
4   MR. ROBERTSON: Objection. That's an
5   important question and that's leading.
6   THE COURT: Well, it is. Sustained.
7   BY MS. STOLL-DeBELL:
8   Q What was your first reaction after reading the
9   patents?
10   MR. ROBERTSON: Objection, vague and
11 ambiguous.
12   MS. STOLL-DeBELL: Your Honor, I'm trying --
13   THE COURT: I guess my basic inquiry here is
14 why is it that what he thinks is relevant? To what
15 issue does it go that this jury has to decide? That's
16 the question. So just name the issue that it goes to.
17   MS. STOLL-DeBELL: It goes to the intent
18 element of indirect infringement. And Mr. Robertson
19 actually asked Mr. Christopherson about this same
20 topic when he put him on the stand in his case. And
21 so it goes to that.
22   MR. ROBERTSON: I didn't ask him anything
23 about what he thought or his reaction or anything. I
24 just asked him if he was aware that a lawsuit was
25 filed and if he had notice since that date.

1572

CHRISTOPHERSON - DIRECT   1572

1   THE COURT: What he thought is the irrelevant
2   to this case except with respect to the intent element
3   of indirect infringement; is that right?
4   MS. STOLL-DeBELL: Yes.
5   THE COURT: This information can be
6   considered by you, ladies and gentlemen, only in
7   deciding whether or not a certain element of in
8   direction infringement has been met, and that is
9   whether there was an intent to have an infringement.
10 And so you can consider it for that purpose and that
11 purpose alone. And I'll give you some more
12 instructions later about what indirect infringement
13 is.
14   But for your purposes, you can just keynote
15 this testimony of what his reaction was goes to the
16 intent to indirectly infringe or to have indirect
17 infringement. Excuse me. Go ahead.
18 Q Can you go ahead and answer the question?
19 A Can you restate the question. It's been awhile.
20 Q Sure. After you read the patents, what was your
21 first reaction?
22 A My first reaction was that it didn't appear as
23 though we were actually doing that, the three patents.
24 Q Why did you think it didn't appear that you were
25 doing what was in the three patents?

1573

CHRISTOPHERSON - DIRECT   1573

1   MR. ROBERTSON: Your Honor, now I'm going to
2   object. This calls for a legal conclusion and an
3   expert opinion.
4   MS. STOLL-DeBELL: Your Honor, it doesn't.
5   I'm asking him what he thought. I'm not asking him
6   for his opinion. I'm not asking him about the claims.
7   THE COURT: When you asked him what he
8   thought, why isn't that asking him for an opinion?
9   MS. STOLL-DeBELL: Well, I suppose it is a
10 lay opinion on some level, but Mr. Robertson asked him
11 what Lawson as a company did after this lawsuit was
12 filed. And Mr. Christopherson was involved in that,
13 and I'm just trying to inquire further into the issue
14 of Lawson's intent.
15   THE COURT: What he said was he didn't think
16 that Lawson practiced the patent. That's what his
17 reaction was.
18   MS. STOLL-DeBELL: Yes.
19   THE COURT: And you want to know why he
20 thought that?
21   MS. STOLL-DeBELL: Yes.
22   THE COURT: You can consider that for the
23 same limited purpose, ladies and gentlemen.
24 BY MS. STOLL-DeBELL:
25 Q Why did you think that Lawson was doing something

1590

1 Q Does that refresh your recollection that this new

2 functionality was added with respect to 8.0.3 when

3 this release note came out?

4 A This reflects -- it does help refresh my memory

5 about these particular release notes, yes.

6   THE COURT: That wasn't the question. The

7 question was: Does it refresh your recollection that

8 the new functionality has been added to electronically

9 load a vendor file which contains vendor item, unit of

10 measure, and unit of price information into the

11 purchase order application? Does it refresh your

12 recollection on that point?

13   THE WITNESS: Yes, it does.

14   THE COURT: All right. And did it?

15   THE WITNESS: Did it do what?

16   THE COURT: Did it do what it said in that

17 first sentence that you've been talking about?

18   THE WITNESS: Yes, it did, Your Honor.

19   THE COURT: All right. Let's go.

20 BY MR. ROBERTSON:

21 Q The next bullet point says, Item 3 identifies how

22 a Lawson item number should be created when adding the

23 catalog item to the item master. Do you see that?

24 A Yes.

25 Q Those are the terms you used, the catalog item,

1591

1 isn't that right, when you made this new release note

2 for Version 8.0.3?

3 A That's a term that was used by the technical

4 writer.

5 Q You're not trying to run away from "catalog," are

6 you, sir?

7 A No. You did ask me "did you use that term," and I

8 did not use that term.

9 Q I'm sorry. It was an indefinite pronoun. Did

10 Lawson use "catalog item" when it did these release

11 notes?

12 A Yes, it did.

13 Q On this import process?

14 A Yes.

15 Q It's the vendor that are provides the item catalog

16 in a CSV format; is that right?

17 A That's correct.

18 Q The vendor discloses or makes known that item

19 information in that CSV format, correct?

20 A Discloses to whom?

21 Q The customer.

22 A To the customer, yes.

23 Q And Lawson in this vendor import agreement process

24 calls that vendor information "item catalog

25 information," right?

1592

1 A That's correct.

2 Q And you would agree with me that that item catalog

3 information disclosed by the vendor or the supplier

4 through a vendor agreement import process ends up in

5 the item master, correct?

6 A Say that again.

7 Q Yes. The vendor or the supplier who provides this

8 item catalog information to the customer can be

9 imported through this process we're talking about

10 here, this vendor agreement import, into the item

11 master?

12   MS. STOLL-DeBELL: Objection to form of the

13 question. It's unclear.

14   MR. ROBERTSON: I'll rephrase, Your Honor.

15   THE COURT: All right.

16   MS. STOLL-DeBELL: I think he talked about a

17 supplier being loaded in.

18   MR. ROBERTSON: I'll rephrase the question.

19 BY MR. ROBERTSON:

20 Q The vendor that has provided the catalog item

21 information in a CSV format ends up through this

22 process in the item master; isn't that right?

23   MS. STOLL-DeBELL: Objection. The vendor --

24 the question is unclear.

25   THE COURT: Are you asking whether the vendor

1593

1 ends up in the item master?

2   MR. ROBERTSON: No.

3   THE COURT: That's what her objection is and

4 I think it's well taken.

5   MR. ROBERTSON: Let me rephrase then.

6   THE COURT: It's the item that ends up there,

7 I think.

8 BY MR. ROBERTSON:

9 Q The vendor provides the item catalog information

10 that ends up in the item master; isn't that right?

11 A That is some of the information that ends up

12 there.

13 Q Why don't you take a look at this vendor import

14 price agreement again. Let me see if I can refresh

15 your recollection on the process. If you would look

16 at the page that ends 428.

17 A Sorry about that. I was in the wrong document.

18 Q That's all right. Take your time. Do you see

19 that page is entitled, Vendor agreement import?

20 A That's correct.

21 Q And in the first box, it says, Vendor provides

22 item catalog in CSV format. Do you see that?

23 A That's correct.

24   MS. STOLL-DeBELL: Your Honor, he hasn't

25 asked him if this refreshes his recollection, and the

1594

1 witness has already testified that he hasn't seen this

2 document before.

3   MR. ROBERTSON: I was just about to ask that

4 question since I just directed him to it.

5   THE COURT: All he said is that's what it

6 says.

7   MS. STOLL-DeBELL: He should ask him that

8 before he reads from the document and then ask the

9 witness to testify.

10   MR. ROBERTSON: I had to use the document to

11 refresh the witness' recollection.

12   THE COURT: Yes, you can. Objection to that

13 part of the process is overruled.

14 BY MR. ROBERTSON:

15 Q So it says here --

16   THE COURT: Just ask him.

17 Q Does this refresh your recollection that the

18 vendor provides item catalog in CSV format?

19 A Yes.

20 Q When you were talking about your ETL process, one

21 of the things you talked about was an extraction. Do

22 you recall that?

23 A Correct.

24 Q You said you could have a CD or a DVD and you even

25 said a flat file, and that's when you identified the

1595

1 term CSV, correct?

2 A Yes.

3 Q Can you tell the jury again what a CSV file is?

4 A CSV is basically a comma separated values.

5   THE COURT: C-o-m-m-a?

6   THE WITNESS: Yes.

7 Q And those values that are being separated is data

8 with respect to the catalog item; isn't that right?

9 A It starts out that way, yes.

10 Q And that was disclosed or made known to the

11 customer by the vendor, right?

12 A Correct.

13 Q And in this page that we're looking at here now,

14 428, you'll see that there is a series of arrows

15 pointing to other boxes, and at the very end there's a

16 database, I believe.

17   Would you agree with me that that's what's being

18 characterized there?

19 A Some sort of a data repository, yes.

20 Q In there, it says, Create item master vendor item

21 records, do you see that?

22 A Correct.

23 Q So this through this chart, Lawson is showing a

24 customer how this vendor item catalog information that

25 it disclosed or made generally known ends up in this

1596

1 database that is creating the item master and

2 containing vendor item records, correct?

3 A At a very high level, yes.

4 Q And in this imported file, which is this comma

5 separated value format, there are certain required

6 fields, correct?

7 A That's correct.

8 Q One of the required fields is a vendor item

9 number; isn't that right, sir?

10 A Correct.

11 Q And one of the required fields is a vendor item

12 description, correct?

13 A Correct.

14 Q And one of the required fields is a unit of

15 measure; isn't that right?

16 A Correct.

17 Q And one of the required fields is a unit price;

18 isn't that right?

19 A Correct.

20 Q If you turn to the page that ends 431, there are a

21 number of fields there. Are you comfortable now with

22 this exhibit that it is describing the vendor import

23 price agreements at a high level?

24 A It appears to be, yes.

25   MR. ROBERTSON: Your Honor, then I would move

1597

1 admission of this document.

2   THE COURT: Any objection?

3   MS. STOLL-DeBELL: No.

4   THE COURT: All right. It's admitted as

5 what?

6   MR. ROBERTSON: I think it's Plaintiff's

7 Exhibit No. 521.

8   THE CLERK: 521?

9   MR. ROBERTSON: Yes, sir.

10   (Plaintiff's Exhibit No. 521 is admitted into

11 evidence.)

12 BY MR. ROBERTSON:

13 Q If you will turn to the page -- actually, why

14 don't we, now that it's admitted, let's go back and

15 take a look at that page I was talking about, which

16 ends with the Bates label 428.

17 A Okay.

18 Q So we've agreed that this item catalog information

19 is disclosed or made known by a vendor. That's the

20 first box. And I understood you to agree with me that

21 this sort of barrel-shaped thing at the bottom, that's

22 a database, correct?

23 A Correct.

24 Q So you go through phase 1 where the Lawson

25 Software reads the CSV file from the vendor to create

1598

1 a vendor agreement, correct?

2 A That's correct.

3 Q And we go through this phase 2, mark or unmark a

4 subset of vendor items for inclusion in the vendor

5 agreement, right?

6 A That's correct.

7 Q If it's a new item, it goes over and it's

8 indicated as yes to phase 3, import marked vendor

9 items for inclusion on vendor agreement, correct?

10 A That's correct.

11 Q And then it ends up in the item master there where

12 it says, Create item master vendor item records,

13 right?

14 A That's correct.

15 Q Let's go to the page we talked about that has

16 required fields which ends at 430.

17 A Ends at 430?

18 Q The Bates label that ends with 430, sir. Now,

19 it's talking about what actually was imported in that

20 file, right? I asked you about whether these were

21 required fields.

22 A It could. I've not seen this before, so give me a

23 chance to look at it. You've obviously had that

24 chance.

25 Q That's fair.

1600

1 information when it provided this catalog data,

2 correct?

3 A That's correct.

4 Q The next one is UOM, do you see that, sir?

5 A Correct. Yes, I do.

6 Q That's the unit of measure, right?

7 A That is, yes.

8 Q That's one of the required things the vendor had

9 to do, right?

10 A Yes.

11 Q The next one is the item cost. Do you see that?

12 A Yes, I do.

13 Q That's also one of those required things that the

14 vendor had to make known or generally available to the

15 customer in order for this to be loaded into the item

16 master, correct?

17 A Correct.

18 Q The next one is a Lawson item number, okay? Do

19 you see that?

20 A Yes.

21 Q So now Lawson can create its own item number for

22 that, right?

23 A Correct.

24 Q But you can also have a field for a universal

25 product code, correct?

1599

1 A Yes. Okay.

2 Q Just confirm for us that you agreed with me when I

3 asked you whether all four of these things were

4 required fields, correct?

5 A Correct.

6 Q If you turn to the next page, there's additional

7 fields, isn't there?

8 A That's correct.

9 Q One of the fields in this importing vendor

10 catalogs into the item master is, in No. 2, a vendor

11 item description. Do you see that?

12 A Correct.

13 Q And it's described as the vendor's item

14 description, right?

15 A That is correct.

16 Q That is who disclosed or made generally known that

17 description, right?

18 A That's correct.

19 Q The next one is a vendor item number. Do you see

20 that, number 3?

21 A Uh-huh.

22 Q It's the vendor identification code for the item;

23 isn't that right?

24 A That's correct.

25 Q The vendor made generally known or disclosed that

1601

1 A Correct.

2 Q You can also have a field for stock-keeping units;

3 isn't that right?

4 A Correct.

5 Q Go down to No. 12. Do you see there they have

6 manufacturer item number?

7 A Yes, I do.

8 Q That's also information the vendor can provide

9 that can then be imported into the item master,

10 correct?

11 A That's correct.

12 Q And talked a little about these UNSPSC codes?

13 A Correct.

14 Q No. 16 talks about the -- actually, let me

15 rephrase. You're familiar with that UNSPSC code,

16 right?

17 A Right.

18 Q It's a hierarchy to drill down to try and identify

19 products, correct?

20 A Correct.

21 Q And yesterday I asked you if that could be used in

22 order for cross-referencing products, and I think you

23 agreed with me. Do you mean that?

24 A That was not yesterday. Two days ago, but yes.

25 Q Okay. Sorry. They're starting to blur together.

1602

1 I appreciate that.

2   It also has a field for the UNSPSC family. Do you

3 see that?

4 A Correct.

5 Q Now, if you turn to the next page. There's a

6 black box around those four required fields there. Do

7 you see that?

8 A Correct.

9 Q So what's being emphasized here is this black box.

10 These are the required fields, but all these other

11 fields are available, right?

12 A Fair. We don't understand the content, but that

13 appears to be it, yes.

14 Q But these are the fields that are available in

15 this import process; isn't that right?

16 A These are the fields that are available?

17 Q That can be filled with catalog item data?

18 A These are for the fields, yes.

19 Q Why don't you turn to the next page.

20   THE COURT: Wait a minute. Is everything

21 listed on that page an available field?

22   THE WITNESS: Correct.

23   THE COURT: Including the four that are

24 bracketed.

25   THE WITNESS: Yes.

1603

1 BY MR. ROBERTSON:

2 Q I think you said earlier when we were talking

3 about -- I think I made an objection as to what fields

4 we were talking about.

5 A Sure.

6 Q And the Court asked the question: Are they

7 between 0 and 100?

8 A Right.

9 Q These are the fields we're talking about, right?

10 A Absolutely.

11 Q Well, the next page that's now ending with 433

12 also has a field that can be completed for UNSPSC

13 class, right?

14 A Correct.

15 Q And then the next field that can be completed is

16 for UNSPSC commodity, right?

17 A That's correct.

18 Q If you drop down a little bit, there's a number of

19 user defined alpha fields. Do you see that? That's

20 on 24 through 28 are user defined alpha fields,

21 correct?

22 A Uh-huh.

23 Q If you look over, it says, This is a client

24 defined alphanumeric field. Do you see that?

25 A Yes, I do.

1604

1 Q So alphanumeric means you can use the alphabet to

2 describe something or identify it or you can use

3 numbers, right?

4 A Correct.

5 Q You can use both?

6 A Correct.

7 Q There are at least five available user defined

8 fields for that purpose isn't that right?

9 A For alphanumeric, yes.

10 Q One of the things I can put in that field, isn't

11 it, sir, is the vendor name?

12 A You could put the vendor name there, yes.

13 Q If I put the vendor name in there, I come search

14 in the Lawson system by vendor name; is that right?

15 A You're searching for the alpha field.

16 Q If I'm searching in that alpha field, and it has

17 the vendor name, I could search by vendor name,

18 correct?

19 A You would get back those entries, yes.

20 Q Those vendors?

21 A Yes.

22 Q That I put in that user defined field?

23 A Correct.

24 Q Could you just go to the page that ends with 437.

25 That actually is identifying this vendor price

1605

1 agreement import system as PO 536, which you indicated

2 was the catalog load, right?

3 A Correct.

4 Q Why don't you go to the second to last page of

5 what is now Plaintiff's Exhibit 521.

6 A Bates number on that? 477?

7 Q 477, yes, it is.

8 A Okay.

9 Q Do you see there's referenced at the bottom --

10 actually, I'm sorry. Let me just start over and lay a

11 better foundation. This is a screen shot; is that

12 right?

13 A Yes.

14 Q And it's at a web address, an URL, of

15 HTTP://support.lawson.com, correct?

16 A That's correct.

17 Q That's a Lawson website?

18 A Yes.

19 Q And we're looking here at a page on the Lawson

20 website for customer support?

21 A That's correct.

22 Q And one of the things it says here under chapter

23 6, Importing vendor price agreements, are you with me?

24 A Importing -- okay. Got it. Yes. Chapter 6, yes,

25 Importing vendor price agreements.

1606

1 Q And it states underneath there, "With more

2 business being conducted electronically, you," and you

3 understand you to be the customer, right?

4 A Correct.

5 Q "You may have a need to load vendor information in

6 your Lawson application. The vendor agreement import

7 process lets you automatically load vendor pricing

8 information and create item master and purchase order

9 vendor item records," do you see that?

10 A Right.

11 Q That's an accurate statement, correct?

12 A That's correct.

13 Q The heading below that says, Purchase order 8.0.3

14 release notes. Do you recall we talked about those

15 release notes earlier?

16 A Yes.

17   MR. ROBERTSON: Your Honor, I'd like to move

18 those release notes as Plaintiff's Exhibit 522.

19   THE COURT: Any objection?

20   MS. STOLL-DeBELL: No, Your Honor.

21   THE COURT: It's admitted.

22   (Plaintiff's Exhibit No. 522 is admitted into

23 evidence.)

24 BY MR. ROBERTSON:

25 Q It's states under that heading, Purchase order

1607

1 release notes, 8.03, purchase order release notes 1,

2 8.0.3, purchase order release notes. Let me focus on

3 what I want to get here.

4   This document contains release notes for the

5 purchase order application for 8.0.3, 28.0.3, purchase

6 order, purchase notes, purpose order release notes,

7 vendor catalog load, correct?

8 A Correct.

9 Q Now, there's another way for the item master to

10 get vendor catalog data into the -- excuse me.

11 There's another procedure that Lawson employs to get

12 catalog data into the item master, isn't there?

13 A Correct.

14 Q One of those processes is an EDI transaction;

15 isn't that right?

16 A You're talking about which transaction type?

17 Q EDI 832?

18 A Correct.

19 Q So you know if a Lawson customer, for example, has

20 that EDI Lawson module available to it as part of its

21 procurement process, it can use that EDI 832

22 transaction, right?

23 A 832 transaction gets it to the front door, yes.

24 Q And getting in through the front door in order to

25 get into that item master, you can get a price catalog

1608

1 file; isn't that right?

2 A You do get a file, yes.

3 Q It's a catalog file, isn't it, sir?

4 A Correct, yes.

5 Q All right. And that price catalog file can

6 contain data such as the vendors item description,

7 correct?

8 A Correct.

9 Q Vendor identifier?

10 A Correct.

11 Q The price?

12 A Correct.

13 Q The unit of measure?

14 A Correct.

15 Q And the vendor's catalog number, correct?

16 A Correct.

17 Q And the vendor can send the user the vendor price

18 agreement import program, this vendor catalog we've

19 been talking about, in a CSV file that contains a

20 catalog of all the items the vendor can sell the user;

21 isn't that right?

22 A It could.

23 Q Do you have any doubt about that?

24 A I have no doubt that they can do it, yes.

25 Q In fact, customers who have the EDI module that

1609

1 you sell use that EDI 832 to import catalog data,

2 don't they? You are familiar with that?

3 A Yes, I am. Which catalog data are you referring

4 to? The whole catalog?

5 Q Well, it can be the whole catalog, can't it?

6 A It could be the whole catalog.

7 Q And it could be part of the catalog, right?

8 A Correct.

9 Q So it could be the entirety of the catalog or some

10 subset of the catalog, right?

11 A Right.

12 Q The customer having this EDI 832 module has the

13 capability of importing an entire vendor catalog into

14 the item master, right?

15 A It has that capability as you're defining it, yes.

16   MS. STOLL-DeBELL: I'm going to object. It's

17 outside the scope of direct.

18   THE COURT: Overruled.

19   MS. STOLL-DeBELL: Your Honor, I didn't even

20 get into EDI at all.

21   MR. ROBERTSON: She asked him about the

22 manners and the way the data was imported.

23   THE COURT: He testified as to three manners

24 of getting data in, and now he's testifying to a

25 fourth that you didn't ask him about, but the opening

1610

1 of the three opens the door to the fourth, and the

2 fourth includes the EDI. So I think the questioning

3 line is well taken.

4 BY MR. ROBERTSON:

5 Q All right, sir. In this EDI 832 process, you can

6 also get catalog items that give, among other

7 information, the cost of the item and the date on

8 which that cost becomes effective, right?

9 A Correct.

10 Q An then the vendor price agreement import program

11 can take that information and put it into the user's

12 purchasing database, correct?

13 A Correct.

14 Q This 832 catalog sales catalog import, that

15 transaction can be set up to provide for customary and

16 established business and industry practice relative to

17 furnishing or requesting the price of goods or

18 services in the form of a catalog; isn't that right,

19 sir?

20 A That is one of the purposes of 832, yes.

21 Q And that would also include the item

22 identification?

23 A Yes.

24 Q And the product item description?

25 A Yes.

1611

1 MR. ROBERTSON: Your Honor, I'd like to show

2 the witness another document, if I could.

3 Q This is a Lawson document; is that right, sir.

4 A Yes.

5 Q And you recognize this, sir?

6 A I do not.

7 MS. STOLL-DeBELL: Your Honor, I'm going to

8 object. These are all Lawson documents. They were

9 produced during discovery. They should have been on

10 the exhibit list and --

11 THE COURT: He can cross-examine from things

12 that aren't on the exhibit list, but he can't get them

13 into evidence unless you agree.

14 MS. STOLL-DeBELL: Your Honor, I think he can

15 use them for impeachment, but this isn't impeachment

16 testimony. He's asking about documents that should

17 have been on the exhibit list, and they're not.

18 THE COURT: That doesn't have anything to do

19 with whether it's impeachment or not. The correct way

20 to do it is ask him a question first. Don't be

21 getting the document in. Ask him the question. Then

22 ask him an impeaching question if you've got one.

23 BY MR. ROBERTSON:

24 Q Would you agree --

25 MS. STOLL-DeBELL: These are new exhibits.

1612

1 THE COURT: They are not new exhibits because

2 they haven't been admitted, and he erred in handing

3 out the document before he asked the question.

4 MR. ROBERTSON: I apologize, Your Honor.

5 THE COURT: So turn the document over.

6 Forget about the document, Mr. Christopherson. And

7 he's going to ask you a question, and then we may go

8 somewhere, but who knows.

9 As my colleague Judge Williams says, let's

10 abide that event. All right.

11 BY MR. ROBERTSON:

12 Q This EDI 832 price and sales catalog process for

13 importing catalog data, that would provide us with

14 item identification information and product and item

15 description, right?

16 A Correct.

17 Q And I may have asked this already, but it also can

18 provide you with a unit of measure?

19 THE COURT: You asked him all those before.

20 MR. ROBERTSON: I don't think I asked him

21 with respect to EDI, but I asked him with respect to

22 the other import process.

23 Q You could have unit of measure through this EDI

24 transaction process?

25 A Right.

1613

1 Q And you could have the price, too?

2 A Correct.

3 Q All right. That's fine. That's all I have with

4 respect to that.

5 THE COURT: See, the document never came in.

6 BY MR. ROBERTSON:

7 Q Now, are you familiar with the PO 25 vendor

8 catalog load changes?

9 A No.

10 Q Well, do you agree that the vendor catalog load

11 process automatically loads item and vendor item

12 information into the Lawson system?

13 A Say that again.

14 Q That the vendor catalog load process automatically

15 loads item and vendor item information into the Lawson

16 system? Do you agree or disagree with that statement?

17 MS. STOLL-DeBELL: Your Honor, I object. I'm

18 not sure what he's talking about. He just said he

19 wasn't familiar with it. So I don't know if he's

20 moved on.

21 THE COURT: He said he wasn't familiar with

22 something else, and then he changed the question and

23 asked something else.

24 MS. STOLL-DeBELL: Okay.

25 BY MR. ROBERTSON:

1618

1   A   It's not freshing of memory on it.

2   Q   You have no reason to doubt that Lawson offers --

3   THE COURT: That's enough. If it doesn't

4   refresh his memory, that's the end of that line of

5   questioning.

6   MR. ROBERTSON: Can you put up your

7   demonstrative again, please?

8   THE COURT: Which demonstrative?

9   MR. ROBERTSON: I'm sorry. The only one that

10 was used with the witness.

11   THE COURT: Item information changes. Can

12 somebody do that?

13   MS. STOLL-DeBELL: Yes.

14 BY MR. ROBERTSON:

15 Q   Okay. At the top of this item information

16 changes, the first box you put there is vendor gives

17 the information to the customer, is that right, after

18 they change it into an electronic format like a CSV

19 file you've been talking about?

20 A   That's correct.

21 Q   So that vendor item information on your chart is

22 published at some point in time because it was made

23 generally known to the customer; isn't that right?

24 A   It was --

25   MS. STOLL-DeBELL: Objection. Generally

1619

1   known to one person? I mean, I don't think he's using

2   the ordinary meaning of "generally known." Objection

3   to the form of the question.

4   BY MR. ROBERTSON:

5   Q   Is it generally known to your customers?

6   THE COURT: Overruled.

7   A   What's the question again?

8   Q   Yes. This vendor information that's put in

9   electronic format like we've been talking about, this

10 catalog CSV that the vendor can provide, in your chart

11 is given to a customer, correct.

12 A   That's correct.

13 Q   So it's made generally known by publishing it to

14 that customer at some point in time; isn't that right?

15   MS. STOLL-DeBELL: Objection. It calls for a

16 legal conclusion. Now we're using "publishing." He's

17 asking questions --

18   THE COURT: Do you think you can improve on

19 that objection?

20   MS. STOLL-DeBELL: I can, yes.

21   THE COURT: Okay. Go ahead.

22   MS. STOLL-DeBELL: I am objecting to question

23 because he's using the word "publishing." He's

24 objecting to the same kind of questioning that I asked

25 and he objected to me.

1620

1   THE COURT: So that's sort of under the rule

2   of what's sauce for the goose is sauce for the gander,

3   right?

4   MS. STOLL-DeBELL: Yes, Your Honor.

5   MR. ROBERTSON: I understood, Your Honor,

6   that the question was he was able to answer in his

7   understanding.

8   THE COURT: Well, he was. And he's probing

9   the understanding. He was given the right to answer

10 as to his understanding. But you didn't ask the

11 question as to his understanding. You asked the

12 question in an objectionable form, and her objection

13 is sustained.

14 Q   Let me ask it based on your understanding.

15 A   Correct.

16 Q   This is a chart that you created, right?

17 A   That is correct.

18 Q   And in this chart, you're saying that the vendor

19 gives this electronic format, which we've identified,

20 for example, as this CSV catalog file, gives that

21 information to the customer, okay. Is that right?

22 A   That's correct.

23 Q   So in your lay person understanding, by giving

24 that information, is it disclosing it to the customer?

25 A   It's disclosing that to the customer.

1621

1   Q   And it's making it generally known to the

2   customer, right?

3   A   It's making it known to that customer, yes.

4   Q   You can load lots of catalog item data in this

5   item master, can't you, sir?

6   A   Define "lots."

7   Q   For example, Mr. Matias testified, he's from

8   Robert Wood Johnson that he had 36,000 items in his

9   item master, right?

10 A   That's correct.

11 Q   From 3,000 vendors. You were in the courtroom

12 when that testimony was played?

13 A   I don't recall the exact numbers.

14 Q   It was thousands?

15 A   Yes.

16 Q   And the Lawson procurement system has that ability

17 to load thousands of items from thousands of vendors,

18 right?

19 A   Thousands of items from thousands of vendors?

20 Q   Yes.

21 A   So you're going to be saying tens of millions?

22 Q   Well, it can have at least we know from the record

23 36,000 items can be loaded into it from 3,000 or so

24 vendors, right?

25 A   Cumulative, yes.

1622

1   Q Do you know what upper limit there is on the
2   number of items?
3   A It would depend on the field length of the item
4   number that Lawson has, and I don't recall what that
5   was, but that's in one of the previous slides, I
6   believe, that we looked at. It may have been.
7   Q Could it be more than 100,000 items?
8   A Could be.
9   Q Could it be more than 10,000 separate vendors?
10 A Yes.
11 Q And Lawson's procurement system, even it's core
12 procurement system out of the box, has that
13 capability, right?
14 A Correct.
15 Q You were asked whether or not Lawson sells
16 computers, right?
17 A Correct.
18 Q But you do sell services, right, sir?
19 A Correct, services for the software that we sell.
20 Q And services for the software that's at issue in
21 this case, right?
22 A Correct.
23 Q And one of the services you sell is you implement
24 the software modules and applications that are accused
25 in this case on the servers, the computers of your

1623

1   customers, right? You've done that, sir, right?
2   A I have not, no.
3   Q But the company does it?
4   A Yes.
5   Q And the company makes a lot of money from doing
6   that, don't they?
7   A I actually do not get into any of the financials
8   on that.
9   Q But you know that the company does that as one of
10 its regular practices; isn't that right?
11 A Correct.
12 Q And the software that we're talking about is
13 intended to be used on computers, right?
14 A All software is intended to be used on computers.
15 Q Right. I mean, they're not doorstops or bookends.
16 They are intended to run on computers, right?
17 A One hopes so.
18 Q And Lawson knows that when it's implementing it on
19 the customers' computers, right?
20 A That's correct.
21 Q And these implementations, we know, for loading
22 this software that's at issue in this case can take
23 months, can't it?
24 A It can, yes.
25 Q It can take up to a year sometimes, can't it?

1624

1   A Which particular software?
2   Q The software that's accused in this case, this
3   procurement software.
4   A Generally, it's not going to take a year to do
5   that.
6   Q Did you see the deposition testimony of Blount
7   that said it took seven months to load the software?
8   A Correct.
9   Q That's not a typical, is it?
10 A Seven months, not atypical, but also you have to
11 look at the full product set that they were probably
12 putting in. It may go beyond just the accused
13 products.
14 Q You talked a lot about the item master table. You
15 are familiar with the vendor item table, correct?
16 A The vendor item table?
17 Q Yes.
18 A Yes.
19 Q In that table there's a vendor identification,
20 right?
21 A Correct.
22 Q And I understood you to say that there can be
23 communication among these modules, right?
24 A There is, yes.
25 Q You're familiar with the table that's the

1625

1   POITEMVEN?
2   A POITEMVEN?
3   Q Yes. That's the vendor item table?
4   A That's what it is, yes. That's the computer name
5   for it.
6   Q That's where that vendor item identification can
7   be, right?
8   A Correct.
9   Q That's also where you can have price information?
10 A Yes.
11 Q And the item number there serves to link the item
12 record to the ITEMMAST table; is that right?
13 A That's now the communication occurs, yes.
14 Q And the ITEMMAST table is the item master table;
15 isn't that right, sir?
16 A Correct.
17 Q And so between those two tables you can link the
18 item information that we've been talking about that's
19 in the item master table to the vendor information
20 that's provided in the vendor item table, right, sir?
21 A Correct.
22 Q You heard Mr. Niemeyer, the source code expert,
23 testify exactly to that, didn't you?
24 A That's the way relational databases work.
25 Q Exactly. Do you have the exhibit notebook that

1626

1 you were handed by Ms. Stoll-DeBell?
2 A Sure.
3 Q If you'd look at Plaintiff's Exhibit 361.
4 A Okay.
5 Q Specifically, if we go to -- just to fresh the
6 jury's recollection. This was screen shots from the
7 demonstration of the Lawson requisition system; is
8 that right?
9 A That's correct.
10 Q And this is not RSS, this is just the requisition
11 module we're talking about, right?
12 A I have not looked through all the slides, so --
13 Q Let's go to the page that ends with the Bates
14 label 255.
15 A Okay. 255?
16 Q Yes, sir.
17 A Okay.
18 Q Now, this is a screen shot of the Lawson
19 requisition module as it appears to the user when they
20 are using it. Do you see it says RQ 10.1 at the top?
21 A I do see that, yes.
22 Q This isn't requisition self service, this is just
23 the requisition module?
24 A This is one program within that module, yes.
25 Q What we see here is a item description, isn't that

1627

1 right? Right in the middle, sir?
2 A All I see right now is fuzzy. But it appears to
3 be something there, yes. Item description, yes.
4 Q Would it help --
5 A Oh, okay.
6   THE COURT: Can you read it? If you can't,
7 you don't have to testify about it.
8   THE WITNESS: I can read it now that he's
9 highlighted it, yes.
10 Q It says, Item description, Dell Dimension 8100,
11 correct?
12 A Correct.
13 Q And that item description was disclosed or made
14 generally known by the vendor in this instance,
15 correct?
16 A I would say probably not.
17 Q Well, it came from that vendor, didn't it?
18 A I would say that the first few words, yes.
19 Q Okay. And the unit cost is there, too. Do you
20 see that? Up on the upper right?
21 A Right.
22 Q That cost, that pricing information, you said
23 comes from the vendor, correct?
24 A That's correct.
25 Q And at the bottom under the item description

1628

1 there's a vendor item and there's a number there,
2 right?
3 A That's correct.
4 Q That vendor item comes from the vendor as well,
5 correct?
6 A That's correct, yes.
7 Q That's all I have with that notebook, sir.
8 A Okay.
9 Q You were asked questions concerning Plaintiff's
10 Exhibit No. 101. This was involving a procurement
11 Punchout. Do you see that?
12 A Yes.
13 Q I think you identified that this was a Lawson
14 document, right?
15 A I identified it as a joint document between Lawson
16 and Trinity Information Services.
17 Q This was some presentation that was being made to
18 Trinity?
19 A I would say -- I cannot say I have no idea who the
20 audience was.
21 Q But you recognized the document when you were
22 asked about it on direct examination by Ms.
23 Stoll-DeBell, correct?
24 A That's correct.
25 Q And Mr. Lohkamp, he was the product strategist who

1629

1 testified here a few days ago?
2 A That is correct.
3 Q Will you go to the page that ends with the Bates
4 label 239? There's a page concerning Lawson
5 requisition self service. That's this RSS application
6 we've been talking about?
7 A Correct.
8 Q I'm going to ask you some questions that are
9 represented in this document, Plaintiff's Exhibit 101.
10 Is it true that it's a web-based user interfaced with
11 a familiar shopping looking field?
12 A Yes.
13 Q And you can have shopping lists for frequently
14 ordered items?
15 A That's correct.
16 Q And you have the ability to request off catalog
17 items and services?
18 A Correct.
19 Q And you can integrate it with Lawson procurement
20 and Procurement Punchout, right?
21 A Correct.
22 Q And one of the benefits that Lawson is identifying
23 here as to this procurement application is that it
24 eliminates manual paper-based requisitioning by
25 providing web-based end user template-based

1630

1 requisitioning and workflow approval leading to faster
2 order cycle times, increased standardization and
3 reduced costs, correct?
4 A That is correct.
5 Q That's one of the benefits of having this kind of
6 procurement software over the old fashioned
7 paper-based procurement process, right?
8 A That's correct.
9 Q Like every invention, you want it to be doing to
10 do something fast, better cheaper?
11   MS. STOLL-DeBELL: Objection, Your Honor.
12   THE COURT: Sort of.
13   MR. ROBERTSON: I'll withdraw the question,
14 Your Honor.
15   THE COURT: Yes, I think so.
16 Q Turn to the next page, sir.
17 A Sure.
18 Q You see the representation there under Lawson
19 Procurement Punchout? You can seamlessly browse from
20 Lawson's requisition self service to vendor websites.
21 Do you see that?
22 A Yes.
23 Q That's an accurate statement, right?
24 A Yes.
25 Q Seamlessly, right?

1631

1 A You have to define what seamlessly means.
2 Q This is your document. Do you have an
3 understanding of what "seamlessly" means?
4 A It's not my document, sir.
5 Q Well, it's a Lawson document. Lawson was
6 representing that the process is seamless, right?
7 A Well, we know --
8 Q Lawson was representing that --
9   THE COURT: You know, it would have just been
10 sufficient to have left the question where it was
11 because he already answered it was seamless and then
12 you get into it.
13   MR. ROBERTSON: I'll move on, Your Honor.
14 BY MR. ROBERTSON:
15 Q When the Lawson system punches out to the Punchout
16 creating the partner's catalog, you remain connected
17 to the Lawson system; is that right?
18 A Say that again.
19 Q Yes. When the Lawson system punches out to the
20 Punchout creating the partner's catalog, you remain
21 connected to the Lawson system, correct?
22 A Correct.
23 Q Let's take a look at the page that ends with Bates
24 label 261, if we could.
25   So here's the representation of this RSS Punchout

1632

1 process flow. Do you see that?
2 A I see it, yes.
3 Q So this is saying how we're going to navigate
4 through this process to build our shopping cart and
5 then pull it back as a requisition and make purchase
6 orders; isn't that right?
7 A Give me a chance to review it.
8 Q Sure.
9 A Okay. At a very high level, yes.
10 Q So at this high level, Lawson is representing that
11 the first step is that Lawson requesters use this RSS
12 screen to punch out to external vendors, correct?
13 A That is correct.
14 Q So then the Lawson requester is presented to the
15 externals vendor's website to search and add items to
16 the vendor's shopping cast. The shopping cart is
17 being checked out and submitted, right?
18 A That's correct.
19 Q Then the shopping cart contents are returned back
20 to Lawson RSS, right?
21 A Right.
22 Q Then the requester checks out their RSS shopping
23 cart and requisition is sent for approval, right?
24 A Correct.
25 Q Once the requisition is approved, the purchase

1633

1 order, the PO there, is created by PO 100. That's
2 accurate, right?
3 A That's correct.
4 Q Then the purchase order can be sent to the vendor
5 using the Lawson EDI module, right?
6 A It can be, yes.
7 Q When the Lawson system was doing that, you
8 remained connected to the Lawson system at all times;
9 isn't that right, sir? Didn't you testify to that in
10 your deposition?
11 A It's connected, yes.
12 Q You were asked about page 265, sir. If you could
13 turn to that. Now, there's some questions about where
14 the software was running on this in this Punchout
15 demonstration. Let me just ask you, this was a joint
16 presentation by Lawson and Trinity Information
17 Systems, right?
18 A Correct.
19 Q So it's operating, as you can tell, I think you
20 pointed to it, sir, the URL address is Trinity Health
21 Organization, right?
22 A That is correct.
23 Q But after where it says TrinityHealth.org/, it
24 says "Lawson/portal," right?
25 A It does say that, yes.

1634

1   Q   So it's using the Lawson portal to be able to

2   access this data that appears here on this web page?

3   A   On this screen, yes, absolutely.

4   Q   And there are four vendors here, correct? There's

5   HP. There's Standard Register. There's Corporate

6   Express, and there's Grainger; is that right?

7   A   That's correct.

8   Q   So the Trinity customer using RSS and Punchout

9   from their computer has access this page to select the

10 product catalog it wants to search, right?

11 A   That's correct.

12 Q   When a customer such as Trinity -- excuse me. Let

13 me just make it generic. When a customer asks Lawson

14 to provide them with access to a Punchout trading

15 partner, Lawson provides that service for them, right?

16 A   Can you state that again?

17 Q   Sure. If a customer comes to Lawson and says that

18 I've got RSS, and I've got Punchout, and I want the

19 following 10 vendor catalogs to be available to me,

20 lawson will make that happen? They'll facilitate it,

21 right? It's one of the services you provide?

22 A   We don't actually facilitate. The customer has to

23 have contract with those providers.

24 Q   If the Court has a contract with that provider,

25 and they came to you, and they say, Will you put these

1635

1   10 vendor catalogs on the system, Lawson provides that

2   service, right?

3   A   Lawson will type in the appropriate characters

4   that need to be in filled in the configuration file.

5   Q   Right. Then it has to do those communication

6   protocols that Mr. Lohkamp talked about in order to

7   have a handshake with that vendor catalog; isn't that

8   right?

9   A   That's correct.

10 Q   At least here we see we have four catalogs that we

11 can click on, is that right, to access the catalog

12 content, right?

13 A   That's correct.

14 Q   And one of those catalogs there is from Grainger.

15 Do you see that?

16 A   That's correct.

17 Q   Grainger is a Lawson Punchout trading partner,

18 correct?

19 A   Yes.

20 Q   And Grainger actually is a catalog that has

21 multiple catalogs within it. You are familiar with

22 that, right, sir?

23 A   I'm not very familiar with Grainger itself. I

24 know it is a Punchout provider.

25 Q   You don't know if it has multiple vendor catalogs

1636

1   within it?

2   A   I do not.

3   Q   What you've indicated here, for example, is that

4   we're selecting the vendor catalog that we want to go

5   to; isn't that right?

6   A   Correct.

7   MR. ROBERTSON: Your Honor, if I may just

8   take one minute to check my notes.

9   With the exception of that one follow-up

10 question I wanted to have, Your Honor, with respect to

11 the issue you're aware of, I'll -- subject to that,

12 Your Honor, I'm finished with the witness. Thank you.

13   THE COURT: All right.

14   THE COURT: Do you have any redirect?

15   MS. STOLL-DeBELL: Yes.

16   THE COURT: How long is your estimate?

17   MS. STOLL-DeBELL: My estimate is maybe 20

18 minutes. We have that issue we need to resolve, too.

19 So --

20   THE COURT: I think probably this is a good

21 time for you-all to take a lunch break. And we're not

22 trying to hold you captive while you're here, so we're

23 not going to get you lunch. You can go ahead and find

24 someplace to eat, get out and enjoy the fresh air and

25 stretch your legs a little bit.

1637

1   Give your notepads to Mr. Neal. He'll hold

2   them for you during the lunch recess.

3   (The jury is out.)

4   THE COURT: Have you got some case law for

5   me, both of you?

6   MR. ROBERTSON: I've got this Broadcom v.

7   Qualcomm case, Your Honor.

8   THE COURT: Do you have cases for me, Ms.

9   Stoll-DeBell? Did you have case law for me?

10   MS. STOLL-DeBELL: Your Honor, there are

11 cases cited in here that I think are relevant.

12   THE COURT: Cited in where?

13   MS. STOLL-DeBELL: Cited in the Broadcom case

14 that I think Mr. Robertson just handed you.

15   THE COURT: Where in the Broadcom case is

16 this dealt with?

17   MS. STOLL-DeBELL: So, Your Honor, there's a

18 case out of the Federal Circuit called Knorr-Bremse

19 and it talks about how there should not be a negative

20 inference drawn from a party's decision not to waive

21 the attorney-client privilege and not to disclose it

22 to opposing counsel.

23   THE COURT: What part of Broadcom are you

24 talking about?

25   MR. ROBERTSON: I'm trying to find it right

1702

1   THE WITNESS: Yes, sir.

2 Q   When was the latest upgrade that Lawson provided to

3 Novant?

4 A   The upgrade was to the 9.01 release.

5 Q   And when was that?

6 A   I think it was 2009.

7 Q   And Novant installed that upgrade?

8 A   Yes.

9 Q   We mentioned the UNSPSC codes before, the UNSPSC codes as

10 you phrased them. Does Novant use the UNSPSC codes in its

11 Lawson system?

12 A   We have them loaded in the data set up in the item master.

13 Q   In the item master using the Lawson system, does the

14 UNSPSC code, does that enable a user to locate an equivalent

15 item?

16   MR. STRAPP: Objection, foundation.

17   THE COURT: He can testify about what he thinks his

18 does, but he can't testify about what all the rest of them do.

19   MR. STRAPP: Your Honor, I also object that it calls

20 for a legal conclusion as well.

21   THE COURT: How?

22   MR. STRAPP: It's asking for an expert opinion

23 regarding a claim in the claim construction terms, term of

24 equivalents.

25   MR. SCHULTZ: There is no equivalents -- Your Honor,

1703

1 that's not a claim term.

2   THE COURT: You can ask him his understanding.

3   MR. SCHULTZ: Yes.

4 Q   Mr. Yuhasz, your understanding with respect to the UNSPSC

5 codes, does the Lawson system installed by Novant have the

6 ability to locate an equivalent item?

7 A   No.

8 Q   Why not?

9 A   In more of a clinical setting, it is difficult to

10 determine equivalent items. We would rely on a clinical

11 specialist to tell us that, two different syringes from

12 different manufacturers or even gauze or even hand sanitizer is

13 an equivalent product.

14   THE COURT: Wait a minute. Clinical, you mean

15 doctors?

16   THE WITNESS: Physicians, nurses, yes, sir.

17   THE COURT: Medical people.

18   THE WITNESS: Medical people.

19   THE COURT: So you don't think it operates that way

20 because you want the doctors and the nurses to be making that

21 decision, not to have a computer make it.

22   THE WITNESS: Yes.

23   THE COURT: Okay, thank you.

24 Q   Do you have an example of a situation where the UNSPSC

25 codes would not work for finding matching equivalent items?

1704

1   THE COURT: Mr. Schultz, on this situation, let's

2 move on. That's just sort of topical specific in their

3 hospital because of their situation, and for good reason they

4 don't want anybody but doctors and nurses telling them what's

5 comparable or equivalent. That's what he's talking about, so

6 that's not what we're dealing with this in this case. Let's go

7 on.

8   MR. SCHULTZ: Actually, Your Honor, that's all I've

9 got.

10   THE COURT: Okay.

11   MR. SCHULTZ: Thank you, Mr. Yuhasz.

12

13   CROSS-EXAMINATION

14 BY MR. STRAPP:

15 Q   Good afternoon, Mr. Yuhasz.

16 A   Afternoon.

17 Q   Could you please put Plaintiff's Exhibit 337 back on the

18 screen for a minute, and page three of the exhibit. Now, we

19 were -- you were discussing just recently this proposal from

20 Lawson and SciQuest. I want to be perfectly clear here. This

21 is just a proposal from Lawson and SciQuest; correct? This

22 isn't the system as actually implemented at Novant; isn't that

23 correct?

24 A   That's correct.

25 Q   And even in this depiction here, graphical proposal

1705

Yuhasz - Cross   1705

1 representation, the item master, the item data, that's Lawson's

2 in this depiction; correct?

3 A   That's correct.

4 Q   Let's talk about the products that are actually installed

5 at Novant. Novant uses the Lawson inventory control module;

6 correct?

7 A   Yes.

8 Q   And Novant also uses the Lawson purchase order module;

9 correct?

10 A   Yes.

11 Q   And Novant uses RSS or requisition self-service; is that

12 correct?

13 A   Yes.

14 Q   And Novant has also licensed procurement punchout; is that

15 correct?

16 A   Yes.

17 Q   Novant's been using Lawson requisition self-service for

18 about five years; is that correct?

19 A   Yes.

20 Q   And prior to that, Lawson was using the requisitions

21 module; is that correct?

22 A   Yes.

23 Q   Isn't it true that Lawson provided personnel to assist

24 Novant with the initial implementation of requisition

25 self-service?

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1706

Yuhasz - Cross   1706

1   A   Yes.
2   Q   And that initial implementation took about four months;
3   isn't that correct?
4   A   I think that was -- I couldn't put an exact date on just
5   the requisition self-service because it is part of a larger
6   project.
7   Q   That larger project took approximately four months; is
8   that correct?
9   A   No, the larger project took more than that.
10   Q   How long did it take?
11   A   I'm not sure I can recollect at this moment.
12   THE COURT: Don't guess. It's okay.
13   Q   Isn't it true that during that initial implementation,
14   Lawson provided Novant with application consulting services?
15   A   Yes.
16   Q   And with technical consulting services?
17   A   Yes.
18   Q   And isn't it true that during that initial implementation
19   of requisition self-service, Lawson also provided Novant with
20   client site training?
21   A   For requisition self-service?
22   Q   Correct.
23   A   Yes.
24   Q   And Lawson personnel actually traveled to Novant to
25   provide some classroom training on requisition self-service;

1707

Yuhasz - Cross   1707

1   isn't that correct?
2   A   Yes.
3   Q   Novant has a maintenance agreement with Lawson for the
4   requisition self-service software; isn't that correct?
5   A   Yes.
6   Q   And isn't it true that that maintenance agreement also
7   allows Novant to receive ongoing upgrades to its software?
8   A   Yes.
9   Q   Lawson also provides Novant with an online library of
10   educational materials regarding its procurement package?
11   A   Yes.
12   Q   Including specific product guides, for example?
13   A   Yes.
14   Q   Is it true that Novant currently has about 70,000 to
15   80,000 active items in its item master database?
16   A   Yes.
17   Q   And those are all available for ordering through
18   requisition self-service?
19   A   Yes.
20   Q   And isn't it correct that those 70,000 to 80,000 items are
21   associated with approximately 10,000 different vendors; is that
22   correct?
23   A   Yes. In rough numbers.
24   Q   And each of those items, those items have textual
25   descriptions, correct, in the item master?

1708

Yuhasz - Cross   1708

1   A   Yes.
2   Q   And those items also have part numbers sometimes; isn't
3   that correct?
4   A   Yes.
5   Q   And items will have vendor or manufacturer numbers;
6   correct?
7   A   Yes.
8   Q   And items sometimes have images associated with them;
9   correct?
10   A   Yes.
11   Q   Items have price information; is that right?
12   A   Yes.
13   Q   And items sometimes will have inventory availability;
14   correct?
15   A   Yes.
16   Q   Now, isn't it true that the manufacturer or the vendor
17   provides the contract price for the items in the item master?
18   A   Yes.
19   Q   And isn't it also true that the description of the items
20   in the item master are provided by the manufacturer or vendor?
21   A   Not without transformation by Novant personnel.
22   Q   You get the descriptions of the goods from the
23   manufacturers; right?
24   A   Yes.
25   Q   You understand UNSPSC to be a classification system for

1709

Yuhasz - Cross   1709

1   particular items; correct? We've discussed that?
2   A   Yes.
3   Q   Isn't it true that Lawson requisition self-service, the
4   application that's used at Novant, has the capability of using
5   those UNSPSC codes?
6   A   Capability exists, not used.
7   THE COURT: You say it exists but you don't use it?
8   THE WITNESS: Yes, sir.
9   Q   Isn't it true that by searching for items using a UNSPSC
10   code in Lawson requisition self-service, that if a user at
11   Novant was to use that capability, it could find items from
12   multiple vendors with a particular UNSPSC code?
13   MR. SCHULTZ: Objection, foundation. He said he
14   doesn't use it.
15   MR. STRAPP: Your Honor, we've been talking about the
16   capability of the Lawson system. The door was opened on
17   direct.
18   THE COURT: It's on cross-examination. I think he
19   can answer that.
20   A   Could you repeat the question.
21   Q   Sure.
22   THE COURT: If you did use it is the question. You
23   may ask that.
24   Q   If a user at Novant was using Lawson requisition
25   self-service searching for an item by using a UNSPSC code, that

1710

Yuhasz - Cross   1710

1 user could find items from multiple vendors with the same
2 UNSPSC code; isn't that correct?
3 A   Yes.
4 Q   You talked a little bit about a competition, an RFP
5 process at Lawson; do you recall that testimony?
6 A   Yes.
7 Q   And the RFP that was sent was for procure to pay solution;
8 correct?
9 A   Yes.
10 Q   By a procure to pay solution, Novant means an end-to-end
11 solution that starts all the way from requisitioning and goes
12 through payment; correct?
13 A   Yes.
14 Q   The Novant Health -- the RPF, that was issued around 2008;
15 is that correct?
16 A   Yes.
17 Q   And that RFP we saw was sent to Lawson; isn't that
18 correct, Lawson and SciQuest?
19 A   Yes.
20 Q   It was also sent to ePlus?
21 A   Yes.
22 Q   Isn't it true that Novant sought the same functionality
23 from ePlus that it sought from all the other vendors as part of
24 this process including Lawson and SciQuest?
25 A   Yes.

1711

1711

1 MR. STRAPP: I have no further questions, Your Honor.
2 THE COURT: Any redirect?
3
4   REDIRECT EXAMINATION
5 BY MR. SCHULTZ:
6 Q   Mr. Yuhasz, Mr. Strapp just asked you about the RFP
7 process. Did either ePlus or Lawson win that RFP process?
8 A   No.
9 Q   Who did?
10 A   Ariba.
11 Q   And why?
12 MR. STRAPP: Objection, Your Honor, relevancy.
13 THE COURT: What difference does it make who won it?
14 MR. SCHULTZ: It goes to the functionality that was
15 selected by Novant for fulfilling what they wanted out of their
16 RFP process.
17 MR. STRAPP: Your Honor, the functionality -- what
18 Novant wanted is irrelevant. What matters here is the
19 functionality that Lawson has in its accused system.
20 THE COURT: It's marginally relevant, but it
21 introduces delay and confusion and opens up a lot of other
22 areas that we don't need to get into that really aren't
23 relevant, so sustained.
24 MR. SCHULTZ: Mr. Yuhasz, thank you for your time.
25 THE COURT: Can Mr. Yuhasz be permanently excused?

1712

1712

1 MR. STRAPP: Yes, Your Honor.
2 MR. SCHULTZ: Yes, Your Honor.
3 THE COURT: Mr. Yuhasz, thank you for being here and
4 giving us your testimony, and you are released from your
5 obligation to be here. Thank you, sir.
6 THE WITNESS: Thank you.
7 THE COURT: Next witness?
8 MS. STOLL-DeBELL: Your Honor, we're calling Mr.
9 Keith Lohkamp back to the stand.
10
11   KEITH LOHKAMP,
12 a witness, called by the defendant, having been first duly
13 sworn, testified as follows:
14   DIRECT EXAMINATION
15 BY MS. STOLL-DeBELL:
16 Q   Mr. Lohkamp, do you have a college degree?
17 A   Yes, I do.
18 Q   When did you get your college degree?
19 A   In 1991.
20 Q   Where did you get it from?
21 A   Stanford University.
22 Q   And what kind of college degree did you get?
23 A   Bachelor's in international relations.
24 Q   Do you have an advanced degree?
25 A   Yes, I do.

1713

Lohkamp - Direct   1713

1 Q   Will you describe that for me, please.
2 A   Yes, I have an MBA from the Haas School of Business at UC
3 Berkeley.
4 Q   When did you get that?
5 A   I got that in 1996.
6 Q   When did you start working for Lawson?
7 A   May 2005.
8 Q   I think the other day you testified that you first learned
9 about ePlus when you saw them at a trade show in 2003?
10 A   Yes, that's correct.
11 Q   Is that correct? But at that time, you were not working
12 for Lawson; isn't that correct?
13 A   That's correct.
14 Q   And then I believe that you testified you didn't hear
15 again of ePlus until 2008 in connection with a Cleveland Clinic
16 bid; is that correct?
17 MR. ROBERTSON: Your Honor, I'm going to object.
18 This is cumulative. We went through this all on the first day,
19 both on direct and cross-examination.
20 THE COURT: Well, what do you say in response to
21 that, Ms. Stoll-DeBell?
22 MS. STOLL-DeBELL: I'm trying to establish when he
23 was an employee for Lawson and compare that to when he heard
24 information about ePlus, and I will say this is the last
25 question on it as well, Your Honor.

1738

Shamos - Direct   1738

1 revolves around the concept of the catalog and whether the
2 Lawson system uses a catalog or multiple catalogs, collection
3 of catalogs, and whether those -- there are such things as
4 separately searchable portions of those catalogs.
5 Q   And so how does the catalogs issue relate to your
6 conclusions?
7 A   The, I think, 11 out of the 12 claims, asserted claims
8 require catalogs, and I used the construction that was
9 propounded by the Court for the word catalog and didn't find
10 catalogs in the Lawson system.
11 Q   When you say Lawson system, we've had a number of initials
12 and things thrown around in the case, so let's make sure we're
13 on the same page. Can you tell me what system or systems you
14 looked at from Lawson to do your analysis?
15 A   I looked at everything that Dr. Weaver accused of
16 infringement, S3, RSS, punchout. There was an earlier system
17 in the case that I also looked at that I understand is no
18 longer in the case.
19 Q   Now, with respect to S3 procurement, are you familiar with
20 the names of some modules that comprise that S3 procurement
21 suite?
22 A   I don't know their literal names. I know functionally
23 what they do.
24 Q   What functionally do the S3 procurement suite modules do?
25 A   Well, there's a search function that enables somebody to

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Shamos - Direct   1739

1 look within the database to determine if particular items are
2 there. There's a mechanism for producing requisitions, and
3 requisition purchase orders can be produced.
4 Q   Are you familiar with the module called inventory control
5 or IC?
6 A   Yes.
7 Q   Is that one of the modules you looked at as well?
8 A   It's one of the modules I considered. When I say looked
9 at. I didn't actually look at source code of these modules
10 except as appeared in other experts' reports.
11 Q   Now, are you familiar with the phrase RSS?
12 A   Yes.
13 Q   What is your understand as to what that is?
14 A   Requisition self-service is a mechanism that allows
15 someone to create a requisition.
16 Q   Is that part of a Lawson product?
17 A   Yes.
18   THE COURT: Excuse me just a minute, Dr. Shamos.
19 Will you pull that mic down a little bit? I'm just -- no, so
20 it's closer to you. You are sort of dropping off at the bottom
21 of the question, and I'm -- are you having trouble hearing?
22 See if you can pick it up at the bottom. The front is okay.
23
24   (Brief interruption.)
25

1740

1 (The jury is present.)
2   THE COURT: Excuse me. I interrupted you.
3 So you need to go back to go whatever question you
4 were on before.
5 BY MR. McDONALD:
6 Q Doctor, how about if we put up slide No. 4,
7 please.
8   THE COURT: Doctor, it's right there in front
9 of you. Can you see it?
10   THE WITNESS: Yes, I can. I was just
11 wondering how the jury is seeing it.
12   THE COURT: They have some down there.
13   THE WITNESS: I got that. Okay.
14 BY MR. McDONALD:
15 Q Everybody has a tv. So don't worry.
16 A Is this one of those draw on it screens?
17 Q Yes. So if you hit the lower left corner, all
18 those marks you just put on will disappear.
19   Now, did you put some slides together in
20 connection with getting ready to testify here today,
21 Dr. Shamos?
22 A Yes.
23 Q I'm going to use a few of those this afternoon and
24 probably a few more tomorrow, but you have a summary
25 that you put together. Is this one of the slides you

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1 put together?
2 A Yes.
3 Q Just to clarify here, Mr. Robertson asked me to do
4 this. So we've got four numbered systems on this
5 slide, correct?
6 A Yes.
7 Q Also there's a combination of that EDI plus S3
8 Procurement. Did you also look at EDI plus S3
9 Procurement with the RSS system as well?
10 A Yes, I looked at everything that was alleged in
11 Dr. Weaver's report.
12 Q Would that be a fifth system, in effect, if we
13 were going to add another number or would you just
14 consider that as part of No. 3?
15 A I didn't specifically list it. It should be a
16 fifth one.
17 Q So that would be a fifth one. Then the EDI system
18 plus S3 plus the Punchout, is that the sixth one? Did
19 you look at that one as well?
20 A Yes.
21 Q Now, you have got some brackets here with 1, 2, 3.
22 Do you see that?
23 A Correct.
24 Q What was your summary with respect to those first
25 three products regarding the infringement issue?

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1 instructions that we think will be appropriate.

2 THE COURT: Several? How about one good one?

3 MS. STOLL-DeBELL: One with many facets, Your

4 Honor.

5 THE COURT: Listen, I'm going to make you sit

6 on the jury. I think every lawyer ought to have to

7 sit on a jury and ought to have to listen to these

8 instructions and try to figure out what do they mean.

9 Because if you read them from the jury's standpoint,

10 particularly these model instructions in the patent

11 area, what they're doing is -- nobody has really made

12 a real good effort to simplify them yet.

13 Judge Spencer did better in SAP in

14 simplifying the instructions than almost anybody I've

15 ever seen, but there have with some legal changes

16 since that time that prohibit me from adopting them

17 full scale.

18 All right. That takes care of them. I'm not

19 real hopeful that you're going to get your evidence or

20 I don't think you ought to be hopeful that you're

21 going to get that evidence in, Mr. Robertson, because

22 it seems to me it invites the jury to speculate and

23 it's a problem, I think.

24 MR. ROBERTSON: I understand, Your Honor.

25 We're also concerned about prejudice given the fact we

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1 proffered that in good faith when it came up with the

2 witness that he had a lay opinion as to his intent. I

3 thought it was relevant then because his lay opinion

4 as to the intent I didn't think was very persuasive,

5 but if you go get a legal opinion on these issues that

6 obviously involve the patents, and then you make the

7 conscious decision not to disclose it, I think that's

8 part of the circumstantial evidence they can consider.

9 I understand Your Honor's ruling.

10 THE COURT: I haven't rules.

11 MR. ROBERTSON: I understand Your Honor's

12 suggestion which way you might rule, but you're going

13 to be fair and read the papers.

14 THE COURT: I thought maybe if I gave you all

15 some insight into where I was right now since we're on

16 the fly that your arguments might be better informed

17 in the morning, just as my thinking will be better

18 informed if I read what you-all tendered for me to

19 read.

20 Thank you so much for the overnight present.

21 I appreciate it.

22

23 (The proceedings were adjourned at 5:26 p.m.)

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1          IN THE UNITED STATES DISTRICT COURT
2        FOR THE EASTERN DISTRICT OF VIRGINIA
3             RICHMOND DIVISION
4
5   --------------------------------------
                                        :
6   ePLUS, INC.              :  Civil Action No.
                            :  3:09CV620
7   vs.                     :
                            :
8   LAWSON SOFTWARE, INC.       :  January 14, 2011
                            :
9   --------------------------------------
10
11      COMPLETE TRANSCRIPT OF THE JURY TRIAL
12      BEFORE THE HONORABLE ROBERT E. PAYNE
13      UNITED STATES DISTRICT JUDGE, AND A JURY
14
    APPEARANCES:
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23
24      Peppy Peterson, RPR
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25      United States District Court
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1            P R O C E E D I N G S
2
3       THE CLERK:  Civil action number 3:09CV00620, ePlus,
4   Incorporated, versus Lawson Software, Incorporated.  Mr. Scott
5   L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and
6   Mr. Michael G. Strapp represent the plaintiff.
7       Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms.
8   Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent
9   the defendant.  Are counsel ready to proceed?
10      MR. ROBERTSON:  Plaintiff is, Your Honor.
11      MR. McDONALD:  Yes, we are.
12      THE COURT:  All right.  Ladies and gentlemen, I'm
13  pleased to report to you my unofficial survey that the economy
14  is recovered.  For the first time in 40 years of trading at the
15  Westhampton Bakery, I had to wait 20 to 30 minutes even to get
16  served, and this the lowest period of the year for that bakery,
17  they tell me.  So I just wanted you to know, but I told them I
18  was waiting because I had promised you would get your donuts
19  and I don't want to be guilty.
20      Dr. Shamos, I saw him earlier.  Dr. Shamos, I remind
21  you -- everybody is renaming you, aren't they?
22      THE WITNESS:  We'll see.
23      THE COURT:  I remind you you are under the same oath
24  you took yesterday, sir.
25      THE WITNESS:  Yes, sir.
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1       THE COURT:  Thank you.
2
3       MICHAEL I. SHAMOS,
4   a witness, called by the defendant, having been previously
5   duly sworn, testified as follows:
6          DIRECT EXAMINATION
7   BY MR. McDONALD:  (resuming)
8   Q   Good morning, Dr. Shamos.  How are you?
9   A   Good morning.  I'm good.
10  Q   I would like to pick up where we left off, if I got it
11  right anyway here this morning, with this slide showing some of
12  the elements of claim one of the '516 patent on this slide that
13  you put together.  Can you walk us through --
14      THE COURT:  Mr. McDonald, excuse me.  Just for
15  orientation purposes, when we left off, you had said that you
16  were going through each claim one by one to show, and that's
17  what you are doing.
18      MR. McDONALD:  Thank you, yes.
19      THE COURT:  I said it's a good time to take a break,
20  so that's what we'll be doing now, is hearing Dr. Shamos's
21  opinion on each claim that's at issue.
22  Q   We have the 12 claims.  We're going to take them one at a
23  time; right, Dr. Shamos?
24  A   Yes.
25  Q   Okay.  So let's start here with what you have on your
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1   whether or not the Lawson accused system satisfies that element
2   of claim nine?
3   A   Yes. In order for there to be a second identification
4   code, there has to be a second catalog, and even if there's one
5   catalog, there weren't two catalogs in S3. So that element
6   can't be present.
7   Q   Is there some language in this element about the second
8   item being, quote, generally equivalent?
9   A   Yes.
10 Q   Do you have an opinion as to whether in the Lawson system,
11 the Lawson systems accused here, satisfy that part of that
12 element?
13 A   There's no notion in the Lawson systems of general
14 equivalents. There's no way to ask the system for a generally
15 equivalent item.
16 Q   Do you have an understanding as to what aspect of the
17 Lawson system is dependent in this case to satisfy that part of
18 that element?
19 A   Only from expert reports.
20 Q   Let's go to slide 30 then, if we can turn to that, Bill.
21 Dr. Weaver, did you look at --
22   MR. ROBERTSON: Dr. Weaver?
23 A   I am Shamos.
24   MR. McDONALD: I made it this far today.
25 Q   Dr. Shamos, did you look at all at the issue of whether or

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1   not in the Lawson system the use of the UNSPSC codes would
2   satisfy any claim elements of any of the asserted claims in
3   this case relating to generally equivalent items?
4   A   Did I look at that?
5   Q   What was your conclusion about that?
6   A   That it doesn't.
7   Q   Why not?
8   A   So, the UNSPSC code is a generally accepted international
9   coding to categorize products. There's a big difference
10 between desks and chairs, and so if you gave a code to desks,
11 you could immediately tell that something was a desk and it
12 wasn't a chair. And it happens to be hierarchically organized.
13   That is, it has different levels, so you can get to office
14 furniture, and then within office furniture you could have
15 desks, and then within desks you can desks with drawers or
16 without drawers, et cetera.
17   The Lawson software does provide the ability for a
18 customer to enter UNSPSC codes into the item master database if
19 he wants to do that, and sometimes it's useful for people who
20 are ordering things to know what the UNSPSC code is associated
21 with a particular item, but those UNSPSC codes are not used for
22 the purpose of determining whether things are generally
23 equivalent.
24   There's no automatic conversion. I can't go and say, if
25 you're out of stock of this product, please give me another one

1819

1   that has the same UNSPSC code. So there's no converting that's
2   going on. There's no matching that goes on with respect to
3   UNSPSC codes even though they may be physically present in the
4   database.
5   Q   You have here, and this is another slide we have up on the
6   screen that you prepared; is that right?
7   A   Yes.
8   Q   On the last point there, what's the last bullet point?
9   Can you explain what you meant by that?
10 A   It's only within RSS, not the totality of the systems that
11 are accused. It's only RSS that allows even searching of the
12 UNSPSC code.
13 Q   Can we turn to the next slide, please, 31.
14 A   Yes.
15 Q   Is this another slide you put together, Dr. Shamos?
16 A   Well, I put it together, but literally it's copied out of
17 a white paper that was published explaining what UNSPSC codes
18 are. So I didn't write the words that are on the slide except
19 for the title.
20   THE COURT: In other words, you made the slide.
21   THE WITNESS: I made the slide. I had an electronic
22 copy of that white paper. I had it on the screen. I used a
23 photo editor, and I did a screen capture and then cropped it
24 down and stuck it on the slide directly out of that UNSPSC
25 white paper.

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1   Q   Can you tell us in a nutshell, Dr. Shamos, what your main
2   point was for putting together this particular slide as it
3   relates to your testimony here?
4   A   Yes. It was to show this eight-digit classification of
5   items and why it's hierarchical. This is the UNSPSC
6   explanation of what these codes look like. The code, as you
7   can see at the bottom where it says pen refills equals UNSPSC
8   classification 44-12-19-03.
9   The significance of those numbers, 12, 19, and 03, depend
10 on the fact that they are coming from 44. So 44 is office
11 equipment, accessories, and supplies. Within that, 12 is
12 office supplies. Within 12, 19 is ink and led refills, and
13 within 19, 03 is pen refills. And so what 44-12-19-03 tells
14 you is it's a pen refill.
15   It doesn't tell you what kind of pen, and so if I want to
16 buy a refill for my pen, it's going to have to have -- if
17 there's any UNSPSC classification at all, it's going to have to
18 have 44, 12, 19, 03, but I can't just buy any pen refill. It
19 has to fit in that particular pen. So these UNSPSC codes don't
20 describe substitutable or generally equivalent items.
21 Q   Can we turn to the next slide, please, number 32. I think
22 you've essentially already covered the first three bullet
23 points on this slide?
24 A   Yes, we can go right to number four.
25 Q   What was your point with bullet point number four?

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1   A   It's very difficult to show --

2   Q   If you would answer that yes or no fairly, I'd

3   appreciate it.

4   A   No, I didn't.

5   Q   You know that Dr. Weaver made some demonstrations,

6   correct?

7   A   Yes.

8   Q   Now, did I understand that you applied the Court's

9   claim construction, is that right, with respect to

10 "catalog"?

11 A   Yes.

12 Q   And one of your arguments for non-infringement or

13 one of your opinions for non-infringement is that the

14 accused systems don't have catalogs, correct?

15 A   Yes.

16 Q   But you've seen a lot of Lawson documents that

17 talk about importing catalog data into the item

18 master, haven't you?

19   MR. McDONALD: Objection, Your Honor,

20 irrelevance regarding the Lawson documents for

21 business purposes. They were not written with an eye

22 towards the Court's construction.

23   MR. ROBERTSON: I was going to follow-up,

24 Your Honor, with respect to that.

25   THE COURT: Overruled.

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1   Q   You have seen a lot of Lawson documents that use

2   the term "catalog," correct?

3   A   Yes.

4   Q   Now, how do you know that Lawson's using that term

5   "catalog" inconsistent with the Court's claim

6   construction?

7   A   Because Lawson had no idea what the Court's claim

8   construction would be when it wrote those documents.

9   Q   How do you know it's inconsistent with the Court's

10 claim construction?

11 A   Well, because I know what the structure of the

12 Lawson database is.

13 Q   When Lawson was using the term "catalog" in its

14 documents, you have no idea if they were using it

15 inconsistent with the Court's claim construction;

16 isn't that right?

17 A   I didn't really consider the fact that they used

18 the word "catalogs." I don't think it has any

19 relevance.

20 Q   What if they were using it consistent with the

21 Court's construction?

22 A   Then they would have been wrong.

23 Q   Well, did you ask anybody at Lawson whether they

24 were using the term "catalog" consistently with the

25 Court's claim construction?

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1   A   No.

2   Q   Because you didn't talk to anybody at Lawson,

3   right?

4   A   If I had, I don't think I would have brought up

5   the Court's claim construction with them.

6   Q   Well, if you saw a lot of documents that were

7   using the term "catalog," wouldn't you be at least

8   curious as to whether or not that satisfied the

9   Court's claim construction when they used had term?

10 A   No, because terms are frequently used in a way

11 that's different from the way they are construed in a

12 particular patent.

13 Q   Sure. And sometimes they are used as they are

14 construed in a particular patent, aren't they?

15 A   It can occur.

16 Q   But you didn't make that inquiry, right?

17   THE COURT: He's already answered that

18 already.

19   MR. ROBERTSON: I'll move on.

20 Q   Can we take a look at the Court's claim

21 construction for "catalog"? I understood you to say

22 yesterday that an organized collection of items and

23 associated information was -- I think you said the

24 item master there is certainly an organized collection

25 of items and associated information in the item

1880

1   master. So that prong of the construction would be

2   satisfied?

3   A   Yes.

4   Q   Then you also testified that the item master can

5   have information in it such as part number, price,

6   catalog number, vendor name, vendor ID, a textual

7   description of the item, and images that were relating

8   to the item. You know that the item master didn't

9   have that kind of data, right?

10 A   I didn't mention images, but I mentioned some of

11 the others.

12 Q   You do know that the Lawson software is capable of

13 including images of the item, right?

14 A   I actually didn't know one way or the other.

15 Q   You didn't investigate that?

16 A   No.

17 Q   So if that is evidence in the record that they

18 can, that wouldn't affect your opinion one way or the

19 other?

20 A   No.

21   MR. McDONALD: Objection. Lack of

22 foundation.

23   THE COURT: Overruled.

24 Q   So you'd agree with me also that you faithfully

25 applied the Court's construction for vendor to include

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1   MR. ROBERTSON: All right.

2   THE COURT: Just remember, the witness is

3 here. And I know zealous advocacy animates us all to

4 get enthusiastic about our causes, but remember the

5 concept of civility and politeness governs all court

6 proceedings. And I'm not suggesting you weren't civil

7 and polite, but don't let it get out of hand.

8   MR. ROBERTSON: Yes, sir.

9 BY MR. McDONALD:

10 Q   The next bullet point that you have here is when

11 Lawson software is installed, the item master is

12 empty. Do you see that?

13 A   Well, in a second.

14   THE COURT: Wait a minute.

15 Q   I apologize. Do we have the slides. Why don't we

16 do that?

17   THE COURT: What system are we working with?

18 Your system? So Mr. Neal can activate the ePlus side

19 of things.

20 Q   The second bullet point says, When the Lawson

21 software is installed, the item master is empty,

22 correct?

23 A   Yes.

24 Q   But you understand from your review of the

25 document that Lawson also provides services,

1886

1 implementation in which they will either migrate the

2 data from a legacy system to the new Lawson system or

3 they'll assist the customers in loading the item data,

4 correct?

5 A   Yes, I've testified to that.

6 Q   When the Court was construing "catalog," it was

7 referring to this collection of items and associated

8 information that is existing in electronic format in

9 the database, right? You understood that in the

10 context of the patent?

11 A   I thought you just told me to take "database" out

12 of the claim.

13 Q   Well, I told you to take the single database out

14 of the claim, but you understand that that's where

15 this information, this electronic information, data,

16 resides, correct, in the Lawson system? The item

17 master, the database, right?

18 A   Yes.

19 Q   The next bullet point you say is an item master

20 data is selected by inclusion by a customer. Do you

21 see that?

22 A   Yes.

23 Q   And not a vendor. Tell me where in the Court's

24 claim construction that the Judge has said that the

25 actual selection of the item data has to be made by

1887

1 anyone.

2 A   The catalog has to be published by a vendor. If

3 the information is merely selected by a customer, it's

4 not published by a vendor.

5 Q   So you have your own construction of what

6 "published by a vendor" means?

7 A   No.

8   MR. McDONALD: Objection, Your Honor.

9   THE COURT: Overruled.

10 Q   Are you aware of the Court's construction?

11 A   Yes.

12 Q   The Court says "published by a vendor" simply

13 means that at some point in time a vendor, such as a

14 supplier, a manufacturer, or a distributor has made

15 generally known or has disclosed an organized

16 collection of items and associated information

17 preferably but not necessarily including all these

18 descriptions for the product.

19   MR. McDONALD: Your Honor, I don't think he

20 read the very first sentence of the Court's

21 construction.

22   THE COURT: I also don't think I said

23 anything about disclosed. I don't know where you got

24 that.

25   MR. ROBERTSON: I'm looking at what was

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1 handed out, Your Honor, I think.

2   THE COURT: Well, that was what you-all got.

3 That isn't what I read. What I read was published by

4 a vendor as used in the definition of the claim term

5 "catalog/product catalog."

6   "Published" simply means to make generally

7 known. At one time I was thinking about "or to

8 disclose," but I didn't say that. "Published by a

9 vendor" simply means that at some point in time a

10 vendor such as a supplier, a manufacturer or a

11 distributor has made generally known or has disclosed

12 an organized collection of items or associated

13 information preferably but not necessarily including a

14 part number, price, catalog number, vendor name,

15 vendor ID, a textual description of the item, and

16 images of or relating to the item. And it should be

17 items and associated information, I think. But that's

18 what I think I read.

19   MR. ROBERTSON: I thought I was asking him

20 whether it just needs to be made generally known or

21 disclosed. I think Your Honor said --

22   THE COURT: I didn't say "disclosed." I took

23 it out when I read it. You've got a typographically

24 erroneous description.

25   MR. ROBERTSON: All right, Your Honor. I

1893

1 catalog that was published by a vendor.

2 Q Well, the item master doesn't have to be published

3 by the vendor, does it? It's the collection of

4 information -- excuse me. It's the organized

5 collection of items and associated information that's

6 published by a vendor, correct?

7 A But that's what a catalog is. The vendor

8 publishes the catalog.

9 Q The vendor makes that organized collection of

10 items and associated information available to the

11 customer, right?

12 A Yes, the vendor publishes the catalog. I don't

13 think there's any doubt about that.

14 Q Okay. So that's all that's required of the claim

15 that the vendor publish the catalog?

16   THE COURT: Is that a question?

17 Q Isn't that correct?

18   MR. McDONALD: Object to the form.

19   THE COURT: Overruled.

20 A No. If there's to be a catalog in the Lawson

21 system, the catalog had to have been published by the

22 vendor.

23 Q Fine. So point to the language then in the

24 Court's construction of "catalog" that you rely on to

25 say that this organized collection of items and

1894

1 associated information has to be selected by the

2 customer, not somebody else.

3 A It's not that it has to be selected by the

4 customer. It is selected by the customer, therefore,

5 it's not an organized collection published by a

6 vendor. I'm explaining why it doesn't meet the

7 Court's construction, not why it does.

8 Q So what language are you relying on?

9 A Published by a vendor.

10 Q That's the only language you're relying on about

11 this organized collection of items and associated

12 information is that it's got to be published by a

13 vendor?

14 A You just took me through that. We went through

15 everything else in the Court's construction and found

16 it was satisfied except "published by a vendor."

17   THE COURT: I think he's made his position

18 clear. Whether you agree with it or not is a

19 different issue, but I think his position is clear.

20   MR. ROBERTSON: I understand, Your Honor.

21 I'll move on.

22   THE COURT: Let's move on.

23 Q Does it matter then if the customer loads just

24 some of the item information?

25 A Of course. My personal address book was not

1895

1 published by the phone company even though it has

2 phone numbers of some people in it.

3 Q Where in the Court's construction of "catalog"

4 does it say that you have to have all of the item

5 information included?

6 A Well, I don't think that it says all. I know it

7 doesn't say all, and I don't think you have to have

8 all.

9 Q Where does it say you have to have most?

10 A There's a matter of degree.

11 Q Where does it say that in here? It just says "a

12 collection of items and associated information."

13 A Published by a vendor. The question is: What's

14 published by a vendor?

15 Q And you interpret that as meaning you have to have

16 how much?

17 A I don't know. There's some point at which it's no

18 longer published by a vendor in the same sense that my

19 address book is not published by the phone company.

20 Q If I have 50 percent of it, is that enough?

21 A I don't know.

22 Q 75 percent?

23 A I don't know.

24 Q You know that the system, the Lawson system, is

25 capable of incorporating all of the item data from an

1896

1 electronically produced catalog from a vendor, right?

2 A It may or may not be. That may be true for some

3 catalogs.

4 Q Did you make any investigation into that?

5 A Well, I know what the structure of item master is.

6 And item master has fields, some of which are in

7 vendor catalogs and some of which are not in some

8 vendor catalogs. And if there's a field in a vendor

9 catalog for which there's no place in item master, it

10 cannot be imported into item master.

11 Q Does it have to import all the fields?

12 A No.

13 Q The Court's claim construction made clear that

14 some of the data about the item is just preferably but

15 not necessarily; isn't that right?

16 A Correct.

17 Q So it doesn't even have to include all the things

18 that the Court identifies in its construction, right?

19 A I never assumed it did have to include those.

20 Q But you have seen in the item master this kind of

21 data, haven't you? Part number, price, catalog

22 number, vendor name, vendor ID, textual description of

23 the item?

24 A Yes.

25 Q Now, you know that a system or device that is

1901

1   Dell was inserted.

2   Q   That's where you're doing the keyword search. I'm

3   talking about the user fields that are in the system.

4   You can actually enter into a user field a vendor

5   name, can't you, sir?

6   A   I think you can. I'm not sure whether you can

7   search on that field, but you can enter it.

8   Q   So you don't know one way or the other whether you

9   can search once you have entered a vendor name in that

10   field?

11   A   In a use defined field, I don't know.

12   Q   Would it change your opinion if there was evidence

13   in the record that if you did enter the vendor name

14   into one of those user fields, you could search by

15   vendor?

16   A   No, because what you're postulating is the user

17   taking the system and making his own additions and

18   changes to it.

19   Q   The user of the Lawson system, according to you,

20   populates all the data in the item master; isn't that

21   right?

22   A   Yes, I think that's an important point.

23   Q   And if the user inserts a vendor name in one of

24   those user defined fields that it can use, then it

25   could search by vendor, couldn't it?

1902

1   A   If the proposition is that --

2   Q   Can you answer that question fairly yes or no?

3   THE COURT: Just a minutes. Listen to the

4   question he asked and answer that question.

5   THE WITNESS: Okay.

6   A   Could you repeat it?

7   Q   Sure. If the user who's populating the fields

8   with information, price, unit of measure, textual

9   description also uses one of these user created fields

10   and enters a vendor name, you could search by that

11   vendor name; isn't that right?

12   A   Yes. You could search by that vendor name, but --

13   Q   That's fine. You have answered the question.

14   Now, let me ask you this: If I had two

15   catalogs -- just assume I have two catalogs in the

16   item database, the item master, a Home Depot catalog

17   and a Dell computer catalog, right? And just assume

18   for purposes of my question that Home Depot is not

19   selling computers, all right?

20   A   Yes.

21   Q   If I type in a keyword "laptop," I'm not going to

22   get any catalog data from Home Depot, am I?

23   A   Not if they don't have any laptops.

24   Q   I'm going to get laptops from the Dell computer,

25   correct?

1903

1   A   Yes.

2   Q   So in that scenario by using the term "laptop,"

3   which only appears in the Dell catalog, I only

4   selected the Dell catalog to search; isn't that right?

5   A   No, that's false. It looked over the whole

6   database. It just happened because of the

7   circumstances you have set up that there were no

8   responsive hits from the Home Depot catalog.

9   Q   So I got all the Dell items that corresponded to

10   that keyword laptop and none of the items in the home

11   Depot catalog, right?

12   A   Well, that's the output of the search, yes. But

13   if Home Depot had had a laptop, then you would have

14   retrieved the laptop from the Home Depot catalog.

15   Q   Well, if I added a Hewlett-Packard catalog to my

16   catalog database with Home Depot, Dell, and now

17   Hewlett-Packard, and I searched for laptops, I would

18   get hits for Hewlett-Packard and Dell, right?

19   A   Yes.

20   Q   So the selection of the catalog was made by using

21   that keyword because I didn't get any Home Depo hits,

22   but I did get Dell and Hewlett-Packard, correct?

23   A   That's nonsense. It makes no sense at all. It's

24   a happenstance that one particular vendor doesn't sell

25   a thing. So by asking for pens, for example, the fact

1904

1   that you don't get a vendor who doesn't sell pens

2   doesn't mean you have selected particular catalogs to

3   search.

4   There's structure in the software. The software

5   does certain things. In Lawson, it searches the

6   entire item master database. It's fortuitous that a

7   particular vendor doesn't sell a particular thing.

8   That's not a means for selection.

9   Q   Why not? It didn't come back from the Home Depot

10   catalog.

11   A   Because there was nothing responsive in there. If

12   you search for an item that doesn't exist, you

13   certainly wouldn't be saying that you selected no

14   catalogs.

15   Q   No, but if I search for an item that does exist in

16   two catalogs that sell computers and I get results

17   from there, I've selected those two as a subset of the

18   three that are there?

19   A   You have not.

20   Q   All right. You understand that the item master

21   can hold a hundred thousand items or more, correct?

22   A   Yes.

23   Q   And tens of thousands of vendors, correct?

24   A   Yes.

25   Q   And you would agree, wouldn't you, Dr. Shamos,

1909

1 Q Vendor item number?

2 A Yes.

3 Q Unit of measure?

4 A Probably.

5 Q The item cost?

6 A Maybe.

7 Q You haven't seen pricing information in the --

8 A There's pricing information.

9   THE COURT: Lawson and price are two

10 different things, I think, is the distinction.

11   MR. ROBERTSON: I understand.

12 Q You can also have these UNSPSC hierarchal codes do

13 you understand that, on the bottom of the page

14 starting at 16 and 17?

15 A Yes. Those are the two highest levels of the 8

16 digit code that I talked about earlier.

17 Q And you also, if you could go to No. 12, you have

18 the manufacturer item number?

19 A Yes.

20 Q If you will turn to the page that ends 433, you

21 have the next two UNSPSC codes, correct?

22 A Yes.

23 Q No. 24 is a user defined alpha field one, do you

24 see that?

25 A Yes.

1910

1 Q If you will go over to the far column, it says,

2 This is a client defined alphanumeric field?

3 A Yes.

4 Q And alphanumeric, you understand, to be either

5 letters or numbers, correct?

6 A Or both.

7 Q Or both, right?

8 A Yes.

9 Q So that's a user defined field that the user could

10 but the vendor name, isn't it?

11 A He could if he wanted to.

12   MR. ROBERTSON: Could I have Exhibit 522,

13 please.

14   THE COURT: I have a copy of that, too.

15 Q You know what purchase order release notes are,

16 don't you, sir? Do you know generally what release

17 notes are with respect to Lawson software?

18 A Well, I know what release notes are generally,

19 with respect to software, and I don't think Lawson

20 uses that term in any different sense.

21 Q Well, release notes talk about new futures that

22 have come available with the software?

23 A Yes.

24 Q You understand that this 8.0.3 is one of the

25 systems that's being accused of infringement in this

1911

1 case?

2 A Yes.

3 Q If you'll turn to the second page of Plaintiff's

4 Exhibit 522, at the top you see there's a new

5 feature called the vendor catalog load?

6 A Yes.

7 Q And the description that Lawson provided was "New

8 functionality has been added to electronically load a

9 vendor file which contains vendor item, unit of

10 measure, and unit price information into the purchase

11 order application." Do you see that?

12 A Yes.

13 Q That's the representation that Lawson made was

14 part of the new functionality of this accused 8.0.3

15 procurement system, correct?

16 A Well, it's a statement that they have made in

17 their documentation.

18 Q The price information and the unit of measure,

19 that's some of the elements that are in the Court's

20 claim construction for "catalog," correct?

21 A Yes.

22 Q You talked a little bit about this UNSPSC

23 classification codes. Do you recall that?

24 A Yes.

25 Q And you referred to a white paper; is that right,

1912

1 sir?

2 A Yes.

3 Q Can I have Plaintiff's Exhibit No. 11, please.

4   THE CLERK: Are we talking about Plaintiff's

5 Exhibit 11? Is that what you said?

6   MR. ROBERTSON: Yes.

7   THE CLERK: Thank you.

8 Q Is this the white paper you were referring to when

9 you gave your testimony on direct?

10 A Well, I think it is.

11 Q This is a white paper concerning the UNSPSC,

12 correct?

13 A Oh, it is. I'm just looking to see whether it's

14 the same one, and I'm not actually sure that it is.

15 Q Why don't you take a look at the page that ends

16 with the Bates label 044.

17 A Yes.

18 Q That's the --

19 A I have no reason to dispute that this is the one.

20 I could check against my report. I could check the

21 Bates number, but I'm not disputing it.

22 Q I understand. But that's the example you used in

23 your demonstratives; isn't that right, sir?

24 A Yes.

25 Q And we can both agree that Granada Research is an

1925

1   THE COURT: Do you have a copy of his report
2 for him?
3   MR. ROBERTSON: Yes, sir.
4   THE COURT: What paragraph?
5   MR. ROBERTSON: Paragraph 134, on page 40.
6   THE COURT: Page 40, paragraph 134, Dr.
7 Shamos, is what he's going to ask you about.
8 BY MR. ROBERTSON:
9 Q You indicate here that as a hypothetical
10 proposition, it's possible in a sense to avoid
11 searching an entire database each time by creating
12 indexes that allow particular records containing
13 specific data to be located quickly. Did you say that
14 in that your report?
15 A Yes, it says "in a sense."
16 Q Thank you. You also said in this regard, a
17 database index is similar to the index of a book which
18 makes it unnecessary to scan the entire book to locate
19 the occurrence of a word each time a search is
20 performed, correct?
21 A Yes.
22 Q With respect to the Punchout functionality and
23 Punchout procurement, you understand that when the
24 customer is using that functionality with the
25 requisition self service module, they're operating

1927

1 A The phrase I'm having trouble with is
2 "communication protocols."
3   THE COURT: You do not know what they are?
4   THE WITNESS: I know what they are.
5   THE COURT: Do you not know what he means?
6   THE WITNESS: I think I know what he means,
7 but I think it's different from what he said.
8 BY MR. ROBERTSON:
9 Q What do you understand communication protocols to
10 mean?
11 A Well, you can't create communication protocols
12 over the Internet. You have to use standardized
13 communication protocols.
14   If what you mean is Lawson's facility have the
15 ability to connect to the vendors so that you can
16 search the vendor's website, the answer is yes.
17 Q And law also creates those protocols to return the
18 data from a vendor for inclusion into a requisition
19 and then a purchase order; isn't that right?
20 A I'll have a lot easier time if we don't use the
21 word "protocols." Just say mechanism and I'll agree
22 with you.
23 Q Well, Lawson creates that mechanism?
24 A Yes.
25 Q Are you familiar with the term handshake used in

1926

1 within the Lawson system during the entire process,
2 correct?
3 A No.
4 Q So if there were testimony in the record with
5 respect to that, that that is the case, would that
6 change your opinion?
7   MR. McDONALD: Objection. He wasn't able to
8 hear the testimony.
9   THE COURT: That's a proper question. It's
10 the functional equivalent of a hypothetical. That's
11 all right.
12 A I'm an open-minded guy. If whoever said that
13 would explain what he meant by it, it's possible he
14 might change my mind, but merely hearing such
15 testimony exists doesn't change my mind.
16 Q You're aware that it's Lawson who creates the
17 communication protocols with its Punchout trading
18 partners, correct?
19 A Okay. As a general proposition, in order
20 to connect to --
21 Q As a general proposition, do you agree with that?
22 Yes or no?
23 A Repeat it then.
24 Q It's Lawson that creates the communication
25 protocols used in the Punchout procurement process?

1928

1 that context?
2 A Yes.
3 Q Lawson creates that handshake, right?
4 A Lawson implements part of that handshake, yes.
5 Q If there were testimony in this case that Lawson,
6 in fact, creates that handshake, would that affect
7 your opinions in any way?
8 A No, because I understand how handshakes work and
9 it's a two-way street. The vendor has to do certain
10 things, too, as part of the handshake.
11 Q Isn't it true in this Punchout process, selecting
12 checkout on the shopping cart releases the requisition
13 to the next stage of process? And checkout saves
14 items to the cart to the requisition lines, and it
15 goes into the requisition to the next processing
16 stage?
17 A Yes.
18 Q So the shopping cart then is not the same as the
19 final requisition, correct?
20 A I haven't opined on that. I haven't looked at it.
21   THE COURT: You say you haven't looked at it?
22   THE WITNESS: I haven't looked at that. I
23 haven't considered it.
24 Q You were asked some questions about some of these
25 means-plus-function claim constructions. Do you

1929

1 recall that?

2 A Yes.

3 Q Can we go to the page 5 of the glossary, the means

4 for selecting product catalogs to search?

5   You were asked about this particular claim element

6 in Claim Three of the '683 patent?

7 A Yes.

8 Q One of the structures the Court indicated there is

9 a user interface that allows the user to select a

10 catalog, do you see that?

11 A Yes.

12 Q If in one of those user defined fields, I had the

13 vendor name, the Lawson software presents a user

14 interface that would allow me to select that vendor in

15 that field, correct?

16 A If you -- yes, in a sense.

17 Q Thank you. Also in this claim construction, the

18 Court indicated that the structure, corresponding

19 structure, is what's described, and at the end he

20 indicates "and their equivalents," do you see that?

21 A Yes.

22 Q You weren't asked by Mr. McDonald about the

23 equivalents, were you?

24 A No.

25 Q If you'll go to page 3, the means for generating

1930

1 an order list. '172 patent, Claim One.

2   Now, for this means claim, the Court identified

3 the corresponding structure as being a user interface

4 operating on a computer through which a user may

5 select from results of a search program or a search

6 program that generates an order list of matching

7 items; is that right?

8 A That was almost right. I think you read one word

9 wrong.

10 Q Let me start over then. The Court identified the

11 corresponding structures that are disclosed as a user

12 interface operating on a computer through which a user

13 may select from results a search program or a search

14 program that generates an order list of matching

15 items?

16 A You omitted a word that time. I don't think it

17 really matters.

18 Q Tell me which word I omitted.

19 A "From." Select from results from a search

20 program. The second "from" was omitted.

21   THE COURT: It probably was a typographical

22 error, isn't it? I don't know.

23 Q Well, in any event, the reason you say this can't

24 be satisfied is because you say catalogs aren't

25 present in the accused system, right?

1931

1 A Well, no, the function isn't performed. The

2 function has to -- first of all, there has to be a

3 means for searching, which we didn't have, and there

4 has to be a matching item selected by said means for

5 searching.

6   If you don't perform the function, it doesn't

7 matter what structure you have.

8 Q Well, the Court construed means for searching for

9 matching items among the select product catalogs,

10 right?

11 A Yes.

12 Q While we're on that one still, Mr. McDonald didn't

13 ask you about any equivalents, did he?

14 A In the interest of brevity, I don't think he asked

15 me about equivalents or any of the means-plus-function

16 elements.

17 Q Let's go to means for searching for matching

18 items. Now, it's your position that you can't search

19 for matching items among the selected product catalogs

20 because, first, you say there are no catalogs in the

21 item master, right?

22 A That's one reason.

23 Q Let's assume there are catalogs there.

24 A Yes.

25 Q Let's assume that the vendor identified the vendor

1932

1 name in one of those user defined fields. I could

2 then select that catalog, I think you've indicated, by

3 using the vendor name, and then I could search in it,

4 couldn't I?

5 A I did not indicate that, and you can't.

6 Q Doesn't the Court indicate that the corresponding

7 structure here is a search program and modules

8 operating on a computer system with access to data in

9 a database or other file system, correct?

10 A Yes, but you were talking about selected product

11 catalogs.

12 Q I said assume that we have a vendor name and a

13 vendor field and we have selected that vendor name and

14 got results.

15 A That's not selecting a vendor catalog. That's

16 selecting a particular field in a database.

17 Q Don't I get results from that is the catalog that

18 has that vendor name?

19 A Well --

20 Q Can you answer that fairly yes or no? If I just

21 search using that vendor field that I've populated

22 with the vendor names, and I just want Dell, and I put

23 Dell computer in that vendor name, I'll get Dell

24 results, won't I?

25 A Yes, you search the entire catalog to get Dell

2011.01.14 Trial Transcript Day 8 1/14/2011 2:58:00 PM

2045

ENG - REDIRECT   2045

1   and get these binders that you sent up here at the
2   very beginning, not now, because you-all are both
3   adopting a new mode, and I need the space to put in
4   the exhibits that you are using.
5   I'd like to say that I'd like to commend, and
6   it's obvious to me there's been some hard work put in
7   by the legal assistants in this case. There have been
8   very few problems, and when there have been problems,
9   they have been solved immediately. And you can't do
10 that unless you know what you're doing.
11   And the IT people, I think you-all have done
12 a fine job, too. Of course, the lawyers. I don't
13 mean to take anything away from you, but I remember
14 well who does most of the work.
15   MR. McDONALD: Your Honor, just one more
16 thing with respect to that last video that Ms. Huey
17 would like to offer.
18   MS. HUGHEY: I'd like to offer it as
19 Defendant's Exhibit 401.
20   THE COURT: What is it?
21   MS. HUGHEY: This is the transcript of what
22 was read in. My understanding is that
23 Ms. O'Loughlin's deposition transcript was read in, I
24 believe, and it will be marked as an exhibit for the
25 record.

2046

ENG - REDIRECT   2046

1   THE COURT: Any objections? It's admitted.
2   THE CLERK: What number is that?
3   THE COURT: 401. Defendant's 401.
4   (Defendant's Exhibit 401 is admitted into
5   evidence.)
6   THE COURT: All right. Anything else anybody
7   has so we can get ready to go on Tuesday morning?
8   MR. McDONALD: Nothing else, Your Honor, for
9   the defense.
10   THE COURT: All right.
11   MR. ROBERTSON: Sorry, Your Honor. I didn't
12 hear you.
13   THE COURT: I just want to know if there's
14 anything else so that we can solve it and get going
15 and actively out of the box at nine o'clock Tuesday
16 morning.
17   MR. ROBERTSON: Nothing by the plaintiff.
18   THE COURT: Okay. That sounds good. All
19 right.
20
21   (The proceedings were adjourned at 5:20 p.m.)
22
23
24
25

ePlus - Perfect Commerce (Lawson)   Unsigned   Page 2045 - 2046

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 1        IN THE UNITED STATES DISTRICT COURT
 2     FOR THE EASTERN DISTRICT OF VIRGINIA
 3            RICHMOND DIVISION
 4
 5   ---------------------------------------
                                          :
 6   ePLUS, INC.              :  Civil Action No.
                              :  3:09CV620
 7   vs.                      :
                              :
 8   LAWSON SOFTWARE, INC.    :  January 21, 2011
                              :
 9   ---------------------------------------
10
11      COMPLETE TRANSCRIPT OF THE JURY TRIAL
12      BEFORE THE HONORABLE ROBERT E. PAYNE
13     UNITED STATES DISTRICT JUDGE, AND A JURY
14
     APPEARANCES:
15
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23
24       Peppy Peterson, RPR
         Official Court Reporter
25       United States District Court
```

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 1            P R O C E E D I N G S
 2
 3        THE CLERK:  Civil action number 3:09CV00620, ePlus,
 4   Incorporated, versus Lawson Software, Incorporated.  Mr. Scott
 5   L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and
 6   Mr. Michael G. Strapp represent the plaintiffs.
 7        Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms.
 8   Kirstin L. Stoll-DeBell, Mr. William D. Schultz, and Ms. Rachel
 9   Hughey represent the defendant.  Are counsel ready to proceed?
10        MR. ROBERTSON:  Yes, Your Honor.
11        MR. McDONALD:  Yes, Your Honor.
12        THE COURT:  All right.  We'll take plaintiff's JMOL
13   motion first.
14        MR. ROBERTSON:  Good morning, Your Honor.
15        THE COURT:  Good morning.
16        MR. ROBERTSON:  I'm going to be arguing plaintiff's
17   judgment as a matter of law with respect to infringement, and
18   Ms. Albert will be addressing plaintiff's judgment as a matter
19   of law with respect to the invalidity issues.
20        Your Honor, Rule 50 provides that judgment as a
21   matter of law may be granted when a reasonable jury would not
22   have a legally sufficient evidentiary basis to find for the
23   party Lawson on that issue.  ePlus moves for JMOL that Lawson
24   infringes all the asserted claims of the patents-in-suit, both
25   directly and indirectly, both through inducement of
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2800

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 1   infringement and contributory infringement.
 2        I'm not going to go through all the asserted claims,
 3   Your Honor.  I know Your Honor is familiar with them, and that
 4   would just take up too much time, and I know we're pressed for
 5   time here this morning with the Court's schedule this
 6   afternoon, but let me hit a high point, first start off by
 7   saying, we contend that the defendants non-infringement case in
 8   this proceeding has been really based on misdirection, that
 9   they have ignored the Court's claim construction with respect
10   to catalog.  They rewrote the provision for published by a
11   vendor to suit their manufactured non-infringement positions.
12        It required the Court, I think midcourse through this
13   case, to issue the instruction with respect to published by a
14   vendor to bring some clarity to what the Court intended when it
15   gave its instruction with respect to what a catalog is.
16        It did not mean, as the defendant contended, that the
17   item data associated with the catalog could not be selected --
18   or had to be selected by the customer or modified or deleted or
19   reformatted or be an entire catalog.  That was never intended
20   by the Court, and its revised published-by-a-vendor
21   construction made that clear, and I think the arguments made on
22   that, the non-infringement arguments that were based on that
23   have no sound footing in the record on this case.
24        We believe that the best evidence in this case has
25   come from, indeed, Lawson's own witnesses and documents.  Mr.
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2849

1 THE COURT: Is that what the case holds? That's what

2 this case holds -- that's what this case about the travel

3 candle holds, that, in fact, there was no evidence that the

4 travel candle was used in the infringing way.

5 MR. ROBERTSON: There's amble evidence in this case

6 that it's used in the infringing way, both from Mr.

7 Christopherson and --

8 THE COURT: Here's the bottom line. I'm the finder

9 of the fact. I would clearly find that there is infringement

10 of everything that Dr. Weaver said, that each system infringed

11 each claim for the reasons he stated. There isn't any question

12 that I would do that.

13 But I'm not the finder of the fact. So under these

14 facts, under the evidence in this case, don't I have to let the

15 jury decide that case and then come back at the end of the day

16 and see whether that's right? So what I'm inclined to do is

17 reserve judgment on this motion, because I will tell you -- I

18 personally am having real trouble deciding why there's any

19 defense to infringement at all.

20 MR. ROBERTSON: I understand.

21 THE COURT: But I believe that I do have to let the

22 case go to the jury subject to my ability to control that, and

23 I'm going to take this motion under advisement, deny the motion

24 of no infringement by Lawson, keep your motion under

25 advisement.

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1 MR. ROBERTSON: I understand, Your Honor. Thank you.

2 THE COURT: All right, now, invalidity. I believe

3 that -- Ms. Hughey, are you doing that one, too?

4 MS. HUGHEY: I am, Your Honor, and I promise to be

5 much slower this time.

6 THE COURT: Because if you don't, you're going to get

7 knee-capped but not buy me.

8 Let's see. Is this a good place for the court

9 reporters to switch and for us to take a little recess?

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11 (Recess taken.)

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1 THE COURT: All right.

2 MS. HUGHEY: Hello, Your Honor. May it

3 please the Court. Lawson moves for judgment as a

4 matter of law on the issue of invalidity because a

5 reasonable jury does not have a reasonable evidentiary

6 basis to find for ePlus on the issue.

7 At trial documents demonstrated and witnesses

8 testified --

9 THE COURT: Now, there are three grounds of

10 invalidity. One is anticipation.

11 MS. HUGHEY: Correct.

12 THE COURT: One is obviousness.

13 MS. HUGHEY: Correct.

14 THE COURT: And the other is written

15 description.

16 MS. HUGHEY: No, Your Honor, Lawson is not

17 asserting written description.

18 THE COURT: That was there at one time.

19 MS. HUGHEY: Correct.

20 THE COURT: That's no longer there. So I

21 don't need to deal with that one.

22 MS. HUGHEY: Correct.

23 THE COURT: So you have anticipation and

24 obviousness.

25 MS. HUGHEY: Correct, Your Honor. At trial

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1 the documents demonstrated and the witnesses testified

2 regarding the features and functionality of the prior

3 art RIMS system disclosed in the '989 patent.

4 THE COURT: Let's take the anticipation.

5 What is it that anticipates?

6 MS. HUGHEY: The RIMS system alone

7 anticipates every single claim of the patents-in-suit.

8 THE COURT: All right.

9 MS. HUGHEY: In combination, the RIMS system

10 and the TV/2 product render every single one of the

11 claims of the patents-in-suit obvious.

12 Dr. Shamos went through every single claim

13 and explained both the anticipation and obviousness

14 analysis. The evidence at trial further demonstrated

15 that both systems are prior art.

16 The combination of RIMS plus TV/2 renders

17 every single asserted claim of the patents-in-suit

18 obvious. The preferred embodiment disclosed in the

19 patents is the combination of RIMS plus TV/2 and the

20 Court's construction is consistent with that.

21 The TV/2 literature specifically says to

22 combine TV/2 with the parts ordering system and

23 inventory management system. The RIMS system

24 disclosed in the '989 patent was a part ordering and

25 inventory management system.

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1   arguments, Your Honor?

2   THE COURT: We told the jury to come back at 9:00.

3   So you're going to get those instructions over here by -- I

4   need them by four o'clock tomorrow afternoon. So if that lets

5   you sleep a little later, have at it. Does that take care of

6   everything? I don't intend to clean up night.

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8   (Court adjourned.)

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